TRANSCRIPT OF RECORD

[illegible] Court of the United States

OCTOBER TERM, [illegible]

No. 260

[illegible] PETROLEUM CORPORATION, [illegible] [illegible] B. J. BOASE, ET AL., PETITIONERS,

vs.

[illegible] RYAN, S. D. BENNETT AND PHIL. E. [illegible]

[illegible] CERTIORARI [illegible] UNITED STATES CIRCUIT COURT [illegible]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 260

AMAZON PETROLEUM CORPORATION, BARNEY COCKBURN, E. J. BOASE, ET AL., PETITIONERS,

vs.

ARCHIE D. RYAN, S. D. BENNETT AND PHIL E. BAER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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[fol. 2]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

In Equity

No. 652

AMAZON PETROLEUM CORPORATION et al., Complainants,

vs.

RAILROAD COMMISSION OF TEXAS et al., Defendants

BILL IN EQUITY—Filed Oct. 27, 1933

The Amazon Petroleum Corporation is a corporation organized and existing under the laws of the State of Delaware. It is qualified to do business in the State of Texas. Its office and principal place of business is located in [fol. 3] Henderson, Rusk County, Texas. The complainants Barney Cockburn and E. J. Boase are each citizens and residents of the State of Oklahoma, temporarily residing in Rusk County, Texas. Complainant Charles M. Cope is a resident of Kilgore, Gregg County, Texas. Complainant W. C. Turnbow Petroleum Corporation is a corporation organized and existing under the laws of the State of Colorado, duly qualified to do business in Texas. Its office and principal place of business is at Longview, in Gregg County, Texas.

The defendant Railroad Commission of Texas is a body politic, created by the laws of the State of Texas, with its principal office in Austin, Texas; the defendants Lon A. Smith, C. V. Terrell and E. O. Thompson are the duly elected, qualified and acting members of said Commission, Lon A. Smith residing in Henderson, Rusk County, Texas; C. V. Terrell residing in Austin, Travis County, Texas, and E. O. Thompson residing in Amarillo, Potter County, Texas. The defendant James V. Allred is the duly elected, qualified and acting Attorney General of the State of Texas. The defendant H. H. Wellborn is the duly elected,

qualified and acting District Attorney of Rusk County, Texas, residing in Henderson, Texas. The defendant Milton Molhusen is the duly elected, qualified and acting District Attorney of Gregg County, Texas, residing in Longview, Texas. (The above named defendants for convenience will hereinafter sometimes be referred to as State officers.) The defendant Nat Gentry, Jr., is the duly elected, qualified and acting County Attorney of Smith County, Texas, residing in Tyler, Texas. The defendant Archie D. Ryan is Special Agent in Charge of Division of [fol. 4] Investigation of the United States Department of the Interior, and is a non-resident of the State of Texas, temporarily residing at Tyler, in said State. The defendant J. Howard Marshall is Special Assistant to the United States Attorney General, and is a non-resident of the State of Texas, temporarily residing at Tyler, in said state. The defendant S. D. Bennett is United States District Attorney, and resides at Beaumont, Texas. The defendant Phil E. Baer is United States Marshal, and resides at Paris, Texas. (The above named defendants for convenience will hereinafter sometimes be referred to as Federal officers.)

House Bill No. 5755, being Public Act No. 67, passed by the 73rd Congress of the United States, and approved by the President June 16, 1933, styled Federal Industrial Control Act, will for convenience be hereinafter referred to as the National Recovery Act, or NRA. Title 102 of Texas Civil Revised Statutes, with amendments thereto, will for convenience be hereinafter referred to as the Conservation Act.

This is a suit of a civil nature, as between each of the complainants and the defendants, arising under the laws and Constitution of the United States, and the matter or amount in controversy, as between each of the complainants and defendants, exceeds, exclusive of interest and costs, the sum of three thousand dollars.

The complainants, for their several and separate causes of action against the defendants, allege as follows:

I

The Amazon Petroleum Corporation is the owner of oil and gas mining leases covering the following described [fol. 5] lands situated in the State of Texas, to-wit: 4.43 acres out of T. O. Wright Farm, in Juan Vargas Survey,

Smith County, Texas, on which there are two oil wells, each capable of producing 5,000 barrels of oil per day; 3¾ acres out of W. D. Peterson Farm, in Jacob Lewis Survey, Rusk County, Texas, on which there is one oil well, capable of producing 4,000 barrels of oil per day; 1.56 acres known as the Carlisle M. E. Church property in J. B. Cadena Survey, Rusk County, Texas, on which is located one oil well, capable of producing 3500 barrels of oil per day; 4⅔ acres of the E. J. Woodrum land in M. J. Pru Survey, Rusk County, Texas, known as the Afton Thrash and J. C. Crossman lease, on which is located one oil well, capable of producing 3500 barrels of oil per day.

The complainants Barney Cockburn and E. J. Boase are the joint owners of oil and gas mining leases covering the following described lands situated in the State of Texas, to-wit: 12 acres of the A. Thrash Farm, in the E. Collard Survey, of Rusk County, Texas, on which is located two oil wells, having an estimated capacity of approximately 10,000 barrels of oil per day; 52 acres of the Lula Jackson Farm, in the E. Daniels Survey, of Smith County, Texas, on which is located one oil well, having an estimated capacity of approximately 10,000 barrels of oil per day; and 45 acres of the Amanda Green Farm, in the M. Hussner Survey, Smith County, Texas, which has not been developed yet for oil or gas, but which these complainants are preparing to drill two wells on.

The complainant Charles M. Cope is the owner of oil and [fol. 6] gas mining leases covering the following described lands situated in the State of Texas, to-wit: West 4 acres of 5 acre tract on C. H. Hedge Farm, J. C. Barnett Survey, Rusk County, Texas, on which is located one well, capable of producing approximately 5,000 barrels of oil per day; and the northwest ten acres of F. A. Taylor 103 acre tract in the J. C. Barnett Survey, Rusk County, Texas on which is located one oil well, capable of producing approximately 5,000 barrels of oil per day.

The complainant W. C. Turnbow Petroleum Corporation is the owner of oil and gas mining leases covering the following described lands situated in the State of Texas, to-wit: 2 acres, known as the Florence lease, out of the Mary Van Winkle Survey, Gregg County, Texas, on which is located one oil well capable of producing approximately 9600 barrels of oil per day; a town lot in the City of Kilgore,

Texas, known as the Heard lease, adjoining the Heard Hotel, on which is located one oil well, capable of producing approximately 9600 barrels of oil per day; a town lot in the City of Kilgore, Texas, known as the Lacy lease, on which is located one oil well, capable of producing approximately 11,500 barrels of oil per day; 60 acres in the I. Baity Survey, Gregg County, Texas, known as the Dickson lease, on which is located one oil well; capable of producing approximately 6,000 barrels of oil per day; Elder B. lease, containing 2.75 acres of land, in the Mary Van Winkle Survey, Gregg County, Texas, on which is located one oil well, capable of producing approximately 9,600 barrels of oil per day; Elder A. lease, containing 4.47 acres of land, in the Mary Van Winkle Survey, Gregg County, Texas, on [fol. 7] which is located one oil well, capable of producing approximately 10,000 barrels of oil per day; 16.36 acres of land, in the Dolores Sanchez Survey, Gregg County, Texas, known as the McKinley lease, and on which is located one oil well, capable of producing approximately 15,600 barrels of oil per day; 20 acres in the William Castleberry Survey, Gregg County, Texas, known as the Pearsons lease, on which is located two wells, capable of producing approximately 18,000 barrels of oil per day each; 6 acres, in the Dolores Sanchez Survey, Gregg County, Texas, known as the McGrede lease, on which is located one oil well, capable of producing approximately 15,000 barrels of oil per day; 1.97 acres, Mary Van Winkle Survey, Gregg County, Texas, known as the Knowles lease, on which is located one oil well, capable of producing approximately 10,000 barrels of oil per day.

II

Under and by virtue of the leases owned by the complainants as aforesaid, they and each of them are entitled to the exclusive control and possession of their said separate properties, and have the absolute right to produce therefrom all of the oil and gas which said properties are capable of producing, and the wells located on said properties are capable of producing, without waste, and without injury of any kind, at least one-half of their capacity, and these complainants have a market demand for quantities of oil far in excess of the amounts which they are allowed to produce under the acts and orders of the defend-

ants hereinafter complained of, and were it not for such [fol. 8] acts and orders of the defendants, these complainants could produce, handle and dispose of large quantities of oil which they are being deprived of producing by reason of such acts and orders.

III

In doing the acts and things and carrying into effect the orders hereinafter complained of, the state officers purport to be acting under and by authority of the Conservation Act of the State of Texas, and also under and by virtue of authority of the National Recovery Act. The Federal officers purport to be acting under and by authority of the National Recovery Act, but these complainants and each of them allege that all of said defendants are acting without any authority whatsoever, and that they are mere trespassers in enforcing or attempting to enforce said orders and in doing the acts and things hereinafter complained of.

IV

Beginning with the discovery and bringing in of the East Texas oil field, the Railroad Commission of Texas, under pressure from a major part of the oil industry, inaugurated a plan and program of "proration", the purpose of which was and is to curtail the production of oil in the State of Texas to such an extent as to create an artificial demand therefor, their objective being to reduce the supply below the actual consumptive demand with a view of creating and maintaining a high price for crude oil. To obtain this objective, they entered into an agreement with the Conservation boards of the various oil producing states, whereby [fol. 9] they agreed to hold the output of crude petroleum in Texas to approximately 900,000 barrels per day. Since that time they have from time to time made, issued, promulgated and put into effect so-called proration orders, whereby they have prohibited or attempted to prohibit in excess of that amount being produced in the State of Texas, and in order to accomplish that purpose they have from time to time restricted the production from each of the complainants' wells to whatever extent has been necessary to hold the production of the state to approximately that figure, and in doing so have disregarded the producing ca-

pacity of the wells, the market outlet, the requirements of the complainants, and the facilities of the complainants for handling and disposing of their production. All of said orders have been arbitrarily fixed for the purpose of holding the state output to approximately the aforesaid figure without regard to a proper enforcement of the Conservation Act or public necessity.

V

On April 22, 1933, in furtherance of the aforesaid plan, the Railroad Commission of Texas made, issued, promulgated and put into effect an order providing that no well in the East Texas field, including the wells of these complainants, should be allowed to produce in one day in excess of fifteen per cent of its average hourly potential producing capacity, as determined by said Commission.

On June 13, 1933, the order was amended reducing the allowable production per well to ten per cent. On Septem- [fol. 10] ber 30, 1933, the order was amended further reducing the allowable twenty-six per cent, and on October 18, 1933, the order was again amended further reducing the allowable four per cent, so that at the present time the complainants are prohibited from producing from any well on any day in excess of approximately seven per cent of the amount the well is capable of producing in one hour, or 7% of 1/24 of the wells capacity to produce, or about .002 11/12% of their total producing capacity, which, from a practical standpoint, is virtual confiscation of complainants' properties.

VI

The East Texas oil field is very large, comprising approximately 125,000 acres. It has a potential producing capacity of 100,000,000 barrels per day. It is capable of furnishing the United States supply of oil for several years. It is also capable of flowing this supply without the aid of artificial lifting power, and can, therefore, supply the requirements of the industry much cheaper than stripper fields and oil fields which have ceased to flow and from which the oil can be produced by the use of artificial lifting means. One of the purposes, and the operation and effect of the aforesaid plan, is to arbitrarily curtail the production in East Texas so as to enable those engaged in the

industry elsewhere to compete with complainants and others similarly situated in East Texas, thus penalizing complainants and other East Texas producers for the benefit of producers less favorably situated. This results in denying these complainants the equal protection of the law.

[fol. 11]

VII

Prior to the enactment and approval by the President of the National Recovery Act, the Railroad Commission attempted to justify its proration orders as conservation measures to prevent waste, but since that time, and at present, said orders are not and do not purport to be conservation measures, and have and bear no relation to the prevention of waste, but their purpose, as stated in the orders, is to carry into effect the program of the Federal officers, hereinafter defined and set forth.

VIII

Purporting to be acting under authority conferred by the National Recovery Act, on August 19, 1933, the Honorable Franklin D. Roosevelt, assuming to act in his official capacity as President of the United States, but as a matter of fact, without any authority whatever, approved and promulgated what is known as the "Code of Fair Competition for the Petroleum Industry." By executive order of July 14, 1933, he attempted to delegate to the Honorable Harold L. Ickes, Secretary of the Interior of the United States, Plenary power and authority to enforce and carry into effect the provisions of the National Recovery Act relating to the Petroleum Industry, being specifically referred to as section 9 of the Act.

IX

The defendants herein referred to as Federal officers, under color of authority conferred by the National Recovery Act, and the orders of the Honorable Franklin D. [fol. 12] Roosevelt and the Honorable Harold L. Ickes, with the assistance and joint action of the defendants referred to as State officers, are attempting to enforce the aforesaid code and orders as against these complainants, and as an incident to such enforcement are demanding of

and compelling complainants to furnish them with monthly reports showing the following information:

(a) Name, residence, and post office address;

(b) Location of producing properties and number of wells;

(c) Allowable production for each well as prescribed by the Railroad Commission;

(d) Daily production in barrels from each property;

(e) Daily production in barrels from each well;

(f) Amount of all deliveries of petroleum, showing names and places of business of all persons to whom deliveries are made, the quantity involved in each delivery, transportation or other disposition thereof;

(g) All petroleum in storage;

(h) Declaration that no part of such petroleum products has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed by any board, commission, officer or duly authorized agency of the state.

[fol. 13] X

The Federal officers are further demanding that complainant produce no more oil from their wells than the amount prescribed by the orders of the Texas Railroad Commission, and as incident to enforcement of such demands they make repeated inspection of complainants' properties, and gauge their tanks to ascertain the amount of oil being produced by the complainants, and said Federal officers have informed the complainants that they were policing the East Texas oil field for the purpose of compelling the complainants and other producers to comply with the orders of the Railroad Commission of Texas, and said orders of the Honorable Franklin D. Roosevelt and the Honorable Harold L. Ickes, as herein set out.

The said code further provides:

(a) That complainants and other producers engaged in the producing of oil shall pay their employees not less than a specified wage;

(b) shall not work their employees in excess of a specified number of hours per day;

(c) that all employees engaged in similar work shall work the same number of hours, and be paid at least a specified wage, the hours of service and rates of pay being subject to change by the President;

(d) that complainants, and all persons subject to the code, shall insert in all contracts made by them for work to be done in the industry, whereby the contractor shall agree that all of his employees, and all employees of any subcontractor shall be paid the rates prescribed by said code, [fol. 14] and that the schedule of hours of all such employees conform to those prescribed by said code;

(e) that complainants, and other members of said industry, shall not, as a condition of employment, require any employee or anyone seeking employment to join any union or refrain from joining any union or labor organization;

(f) that complainants and other oil producers be prohibited from storing oil or withdrawing oil from storage without the consent and approval of a Planning and Coordinating Committee appointed by the President;

(g) that not in excess of 100,000 barrels of oil shall be withdrawn from storage in the United States on any day;

(h) that required production of oil to balance consumer demand for petroleum products shall be estimated by a Federal agency designated by the President; that allocation of such requirements shall be made among the states, and no state shall be permitted to produce in excess of such allocation, all allocations to be approved by the President.

The defendants herein referred to as Federal officers are attempting to compel these complainants to comply with all the aforesaid provisions of said code and also the aforesaid orders made by the Honorable Franklin D. Roosevelt and the Honorable Harold L. Ickes.

[fol. 15]

XI

Further complaining, these complainants allege that on July 11, 1933, the Honorable Franklin D. Roosevelt, President of the United States, made and promulgated an order, whereby he decreed and ordered that no petroleum, or the products thereof, produced or withdrawn from storage in

excess of the amount permitted to be produced or withdrawn by any state law or valid regulation or order prescribed thereunder by any board, commission, officer; or other duly authorized agency of a state should be transported in interstate or foreign commerce. Under the assumption that the present orders of the Texas Railroad Commission are valid, the Federal officers are attempting under the guise of carrying into effect the order of the President, to prevent these complainants from producing any oil except the allowable fixed by said Railroad Commission, claiming that they are regulating interstate commerce, whereas, as a matter of fact, these complainants are not engaged in shipping any oil, either intrastate or interstate, but are engaged solely in the business of producing and marketing oil. The oil is sold by them on their respective leases, and title to said oil passes from complainants upon its being delivered to buyers on the premises where it is produced. Moreover, complainants allege that they are not producing or shipping any oil in violation of any valid order of any state board, commission, officer or other duly authorized agency of the state, because the orders of the Railroad Commission of Texas, which said defendants are acting under, are void for the various reasons herein set out.

[fol. 16] XII

These complainants further allege that the Secretary of the Interior has further ordered that there shall not be produced within the State of Texas daily in excess of 965,000 barrels of oil per day; that this amount shall be allocated among the different oil fields in the state, and among the different producers in the state, by the Railroad Commission of Texas; that the order of said Commission fixing the allowable for the wells of the complainants was made to carry into effect the aforesaid order of the Secretary of the Interior, and the operation and effect of said order is not the prevention of waste or the conservation of oil, but solely to curtail the production of oil within the state to that figure. Notwithstanding the aforesaid facts, the defendants both Federal and State officers have announced their intention of enforcing the aforesaid orders, and unless restrained from so doing by this Court they will compel these complainants to comply with said orders.

XIII

These complainants further allege that the Secretary of the Interior has made, issued and promulgated an order effective December 1, 1933, which prohibits complainants from selling any oil at a price below $1.17 per barrel, and unless enjoined from so doing the Federal officers will force complainant's obedience to said order.

XIV

These complainants further allege that the defendants State officers have informed the complainants that unless [fol. 17] they comply with the aforesaid orders of the Railroad Commission of Texas that said officers will institute and prosecute against complainants suits to recover penalties of $1,000.00 per day for each day that said orders are violated, and will file informations and cause complainants to be arrested and prosecuted and attempt to have fines and prison sentences inflicted on complainants, as provided in the Conservation Act, and also Act No. — of the 43rd Legislature of the State of Texas, 1933, page 422, Chapter 165, (Title 14, Article 1112 B, Vernon's Annotated Revised Civil and Criminal Statutes of the State of Texas, October, 1933, Cumulative Pamphlet). And said Federal officers have stated that, if the complainants do not comply with said orders they will cause them to be arrested and prosecuted under paragraph c, Section 9, of the National Recovery Act, which prescribes a fine of $1,000.00, or imprisonment for not to exceed six months, or both, for each violation, and unless enjoined, both the State and Federal officers will institute and prosecute such actions, both civilly and criminally, against the complainants, which will result in irreparable injury and damage to complainants, for which they have no adequate remedy at law.

XV

Complainants further allege that while the State officers claim to be attempting to enforce the Conservation Act, and the Federal officers claim to be engaged in regulating interstate commerce, as a matter of fact, they are jointly engaged in a conspiracy to curtail production of crude oil in Texas, and throughout the United States, as ordered [fol. 18] by the Secretary of the Interior; that all their

acts and orders are in furtherance of said conspiracy, and are illegal, unwarranted, arbitrary, unjustified, null and void, and constitute an illegal, unwarranted and unnecessary interference with the rights, liberty and property of complainants, and result in depriving them of their property without due process of law, causing them irreparable loss and damage, for which they have no adequate remedy at law.

XVI

Complainants allege that the orders of the Railroad Commission of Texas, and the orders of the Honorable Franklin D. Roosevelt, President of the United States, and the Honorable Harold L. Ickes, Secretary of the Interior, are illegal, null and void, and the acts of the defendants in enforcing or attempting to enforce said orders illegal, unwarranted and a mere usurpation of power and authority for the following reasons:

1

The National Recovery Act is null and void, and particularly Section 9 thereof, because—

(a) It is an attempt by Congress to delegate its legislative powers to the President.

(b) It is an attempt by Congress to vest in the President the powers of a supreme dictator, contrary to the National Constitution, and contrary to our Republican form of government.

[fol. 19] (c) It authorizes the President to exercise police powers not granted to the National Government by the several statutes of the Union, and is in violation of the 10th Amendment to the National Constitution.

(d) It deprives complainants of their natural and inherent rights contrary to the 9th Amendment to the National Constitution.

(e) It deprives complainant of their property without due process of law, in violation of the 5th Amendment to the National Constitution.

(f) It violates both the 4th and 5th Amendments to the National Constitution, in that it attempts to give the Fed-

eral Government the right to compel the complainants and others to produce their papers and effects, compel them to give evidence against themselves, and deprives them of liberty and property without due process of law.

(g) It is contrary to the 8th Amendment to National Constitution in that it imposes excessive fines and cruel and unusual punishment.

2

Neither orders of the President nor the orders of the Secretary of the Interior, nor the acts of the defendants, are authorized by the National Recovery Act.

3

Section 9, of the National Recovery Act, is void because it is an attempt by Congress to delegate to the President the power to regulate and curtail the production of crude oil under the guise of regulating interstate commerce, [fol. 20] whereas Congress cannot delegate its power to regulate interstate commerce, and Congress itself has no power to curtail production of oil.

4

(a) The orders of the Railroad Commission are not authorized by the Conservation Act or any other law.

(b) They were made without notice and without a hearing.

(c) They are arbitrary, confiscatory and discriminatory for the reasons hereinabove set forth.

(d) The enforcement of said orders deprives these complainants of their property without due process of law, deprives them of their liberty of contract, and the equal protection of the law, in violation of the 14th Amendment to the National Constitution.

5

(a) The Conservation Act is void because its operation and effect deprives complainants and others affected thereby of their propery without due process of law, and

denies them the equal protection of the law, contrary to the 14th Amendment to the National Constitution.

(b) Its operation and effect burdens interstate commerce in violation of the Commerce Clause of the National Constitution.

(c) It is so vague, indefinite and uncertain that its meaning is not ascertainable.

(d) It is an attempt by the General Assembly of Texas [fol. 21] to delegate the power to curtail and regulate the production of oil when the General Assembly itself has no such power, and if it did have, it could not delegate it.

XVII

Complainants specifically plead that the penalty provisions of the National Recovery Act are null and void for the following reasons:

The penalties prescribed are so excessive and disproportionate to the offense for which they are assessed that they are in violation of the 7th Amendment to the Constitution of the United States prohibiting excessive fines and cruel and unusual punishment; and, for the further reason that they are so extreme and drastic as to be calculated to affright those affected thereby from resorting to the Courts to test the validity of the act, to ascertain their rights thereunder and knowing them dare maintain them, and for the further reason that the terms and provisions of said Act are so vague, indefinite and uncertain that it is impossible for those affected thereby to form any standard of conduct whereby they can safely know when they are or are not violating the terms of said Act.

XVIII

For all of the reasons above set forth, and for the further reason that their enforcement is in violation of the 14th Amendment to the Constitution of the United States, the penalty provisions of the Conservation Act of the State of Texas, as well as Act No. — of the 43rd Legislature of the State of Texas, 1933, page 422, Chapter 165, (Title 14, Article 1112 B, Vernon's Annotated Revised Civil and

[fol. 22] Criminal Statutes of the State of Texas, October, 1933, Cumulative Pamphlet) are null and void.

Wherefore, complainants pray:

1: That a three-judge court be convened as provided in Section 380 of the U. S. C. A.;

2: That the Acts and orders of the defendants, and each of them hereinabove complained of, be held to be null and void;

3: That an interlocutory injunction be granted, enjoining the defendants, and each of them, their assistants, agents, representatives, servants and employees, from enforcing or attempting to enforce any of the aforesaid orders, and from doing any of the unlawful acts and things herein complained of, and from in any manner interfering with the complainants in producing, handling and disposing of the oil from their properties herein described, and from in any manner interfering with the complainants in the lawful operation of said properties; and that they be further enjoined from enforcing or attempting to enforce, either through civil action or criminal prosecution, any of the fines and penalties prescribed by either of the acts herein complained of;

4: That upon a final hearing said injunction be made permanent;

5: For costs, and such other, further and general relief as complainants may be entitled to.

W. T. Saye, Saye, Smead & Saye, Solicitors for Complainants.

[fol. 23] *Duly sworn to by W. T. Saye. Jurat omitted in printing.*

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER OF THE DEFENDANTS, ARCHIE D. RYAN, S. D. BENNETT AND PHIL E. BAER—Filed Dec. 12, 1933

Come now the defendants, Archie D. Ryan, S. D. Bennett and Phil E. Baer separately and severally, and for answer

separately and severally to the Bill of Complaint in this cause say:

[fol. 24] (1) There is a misjoinder of parties complainant in that it affirmatively appears from the averments of the bill that the complainants have no joint cause of action against these defendants and the facts averred in the Bill do not constitute a joint cause of action against these defendants.

(2) There is a misjoinder of causes of action in the Bill in that the facts averred therein do not constitute a joint cause of action in the complaints against these defendants and two or more separate, several and distinct causes of action are improperly joined in the bill.

(3) There is no equity in the bill against these defendants for the reason that it affirmatively appears from the averments thereof that in the performance of the acts therein complained of these defendants have been and are engaged in the execution and performance of orders and functions of the President of the United States or the Secretary of the Interior acting directly in the place of the President, and one so acting is not subject to restraint or injunction.

(4) This court is without jurisdiction to enjoin these defendants in this case for the reason that, in respect of all the matters and things herein complained of, they have been and are engaged in the performance of functions delegated to them by the President of the United States or by the Secretary of the Interior acting directly in the place of the President and one so acting under powers conferred by the Congress upon the President may not be restrained or enjoined.

(5) There is a nonjoinder of parties defendant for that [fol. 25] the Secretary of the Interior is an indispensable party. The Defendant Ryan is now, and was at all times referred to in the bill, a Special Agent of the Secretary of the Interior assigned to the Division of Investigations of the Department of the Interior and all acts that he has committed in connection with the matters and things referred to in the bill were committed by him solely and exclusively in his capacity as such Special Agent of the Secretary of the Interior and not otherwise, and this bill therefore is

not maintainable against the defendant Ryan in the absence of the Secretary of the Interior as a party for the reason that the defendant Ryan was acting as a subordinate of the Secretary of the Interior in respect of the matters and things herein complained of.

(6) Further answering the bill these defendants say that it affirmatively appears from the averments thereof that these defendants, with respect to all the matters and things therein complained of, were carrying out and performing orders of the President of the United States and the Secretary of the Interior, and these defendants say therefore that the bill is not maintainable against them in the absence of the said superior officials as whose subordinates it is alleged in the bill they were acting as aforesaid.

(7) There is no equity in the bill against these defendants for the reason that the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the executive orders of the President of the United States issued thereunder and the said regulations are in all respects valid and constitutional.

[fol. 26] (8) Further answering the bill, these defendants say that on, to-wit, July 11, 1933, the President of the United States, by virtue of authority vested in him by the National Industrial Recovery Act, issued and promulgated an executive order prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State, a true copy of the said executive order, marked Exhibit 1, being attached hereto and made a part hereof; that on, to-wit, July 14, 1933, the President of the United States, by virtue of authority vested in him by the National Industrial Recovery Act, in order to effectuate the intent and purpose of the Congress as expressed in Section 9 (c) of the said Act and for the purpose of securing the enforcement of the said executive order of July 11, 1933, authorized the Secretary of the Interior to exercise all the powers vested in the President for the purpose of enforcing Section 9 (c) of the said Act and the said

executive order of July 11, 1933, including full authority to designate and appoint such agents, and set up such boards and agencies as he might deem necessary, a true copy of the said executive order, marked Exhibit 2, being attached hereto and made a part hereof; that on July 15, 1933, July 25, 1933, August 2, 1933 and August 21, 1933, the Secretary of the Interior, by virtue of the power and authority vested in him by the National Industrial Recovery Act and the said executive orders of the President, approved and promulgated certain regulations, a true copy thereof, marked Exhibit 3, being attached hereto and made a part hereof; that with respect to all the matters and things complained of in the bill, the defendant Ryan has [fol. 27] been and is acting as a Special Agent of the Secretary of the Interior in carrying out and performing the said executive orders of the President and the said regulations, and these defendants aver that this bill for an injunction will not lie against them for the reason that neither the President of the United States nor his agent in performing functions delegated to him by the President is subject to restraint or injunction.

(9) Answering the first unnumbered paragraph of the bill, these defendants say that they are without knowledge with respect to whether the complainant, Amazon Petroleum Corporation, is a corporation existing under the laws of Delaware, or whether it is qualified to do business in Texas or whether its office and principal place of business are located in Henderson, Rusk County, Texas, and demand strict proof thereof insofar as such averments are material; that they are without knowledge as to whether the complainants Barney Cockburn and E. J. Boase are citizens and residents of the State of Oklahoma temporarily residing in Rusk County, Texas, and demand strict proof thereof insofar as such averments are material; that they are without knowledge as to whether the complainant Charles M. Cope is a resident of Kilgore, Gregg County, Texas and demand strict proof thereof, insofar as such averment is material; that they are without knowledge as to whether the complainant W. C. Turnbow Petroleum Corporation is a corporation existing under the laws of the State of Colorado or whether it duly qualified to do business in Texas, or whether its office and principal place of business are in Longview, Gregg County, Texas, and

demand strict proof thereof, insofar as such averments are material.

Further answering the said unnumbered paragraph of the bill, these defendants admit that the Railroad Com- [fol. 28] mission of Texas is an agency of the State of Texas duly and regularly created and existing under the laws of Texas with its principal office in Austin, Texas; that the defendants Lon A. Smith, C. V. Terrell, and E. O. Thompson are the duly elected, qualified, and acting members of the Railroad Commission in Texas; that the said Lon A. Smith resides in Henderson, Rusk County, Texas; that the defendant C. V. Terrell resides in Austin, Travis County, Texas; that the defendant E. O. Thompson resides in Amarillo, Potter County, Texas; that the defendant James V. Allred is the duly qualified and acting Attorney General of Texas; that the defendant H. H. Welborn is the duly qualified and acting District Attorney of Rusk County, Texas, and resides in Henderson, Texas; that the defendant Milton Molhusen is the duly qualified and acting District Attorney of Gregg County, Texas, and resides in Longview, Texas; that the defendant Nat Gentry is the duly elected, qualified and acting County Attorney of Smith County, Texas, and resides in Tyler, Texas. These defendants deny that the defendant Ryan is Special Agent in Charge of the Division of Investigations of the United States Department of the Interior, but admit that he is a Special Agent of the Division of Investigations of the United States Department of the Interior, that as such Special Agent he is in charge of the office of the said Division of Investigations in Tyler, Texas, that he is a nonresident of Texas, and that he is temporarily residing in Tyler, Texas; the defendants admit that the defendant J. Howard Marshall is a Special Assistant to the Attorney General of the United States and that he is a nonresident of the State of Texas, but deny that he is temporarily residing in Tyler, Texas. These defendants admit that S. D. Bennett is United States Attorney for the Eastern District of Texas and resides in Beaumont, Texas, and that Phil E. Baer is United States Marshal for the Eastern [fol. 29] District of Texas and resides in Paris, Texas.

(10) These defendants are without knowledge as to any of the facts averred in paragraph I of the bill and demand strict proof thereof insofar as such averments are material.

(11) Answering paragraph II of the bill, these defendants say that they are without knowledge as to the ownership by the complainants of the leases and properties therein referred to and demand strict proof thereof insofar as such averment is material. These defendants deny that the complainants are entitled to the exclusive control and possession of the said properties and that they have an absolute right to produce therefrom all the oil and gas which the said properties are capable of producing. These defendants aver that on the contrary, the rights of the complainants to produce oil and gas from the said properties are subject to valid existing orders and regulations of the State of Texas and the United States and their duly authorized governmental agencies and officials. These defendants deny that wells located on the said properties are capable of producing without waste or injury of any kind at least one-half of their capacity, or that there is a market demand for quantities of oil far in excess of the amounts which the complainants are allowed to produce under any acts and orders of these defendants, or that if it were not for the said acts and orders the complainants could produce, handle, and dispose of large quantities of oil which they are being deprived of producing by reason of the said acts and orders.

Further answering paragraph II of the bill, these defendants aver that the Railroad Commission of Texas, in issuing orders fixing the allowable production of oil from said properties has been duly and legally authorized by [fol. 30] statutes of the State of Texas to consider both underground and surface waste and has been so authorized to eliminate and prevent waste caused by contribution from the manner in which all the producing properties in the State of Texas and other States in the United States are operated and produced as well as to eliminate and prevent waste that may result from the manner in which a particular well or property is operated and produced, and that said Railroad Commission of Texas in entering the orders herein complained of has properly considered and acted to eliminate waste as thus defined by the statutes of Texas.

Further answering paragraph II of the bill, the defendants say that if, as the complainants aver in paragraph VI of the bill, the potential producing capacity of the East

Texas Oil Field is 100,000,000 barrels of oil per day and if the owners of all oil producing properties therein produced therefrom at least one-half of their capacity as the complainants claim to have a right to do, the amount of oil thus produced from the said East Texas Field alone would aggregate approximately twenty-three times the total amount necessary from all sources to satisfy the requirements of all consumers of petroleum and its products in the United States, and great and unnecessary waste would therefore result.

(12) Answering paragraph III of the bill, these defendants admit that the defendants referred to as State officers in the bill insofar as they are acting at all in respect of the matters and things therein complained of, are acting under and by authority of statutes of Texas and valid orders of the Railroad Commission of Texas issued thereunder, but these defendants deny that the defendants designated State officers are acting or purporting to act under and by virtue of the authority of the National Industrial [fol. 31] Recovery Act. These defendants admit that, insofar as they have acted and are acting in respect to the matters and things complained of in the bill, they are acting under authority of the National Industrial Recovery Act and valid orders and regulations issued thereunder and the Code of Fair Competition for the petroleum industry, but they deny that they are trespassers in any respect whatsoever.

(13) Answering paragraph IV of the bill, these defendants say that they are without knowledge as to the motives or purposes by which the Railroad Commission of Texas has been actuated in issuing the orders therein referred to or as to the objectives of the said orders, and these defendants demand strict proof thereof, insofar as such averments are material, but these defendants aver that it does not appear from the averments of the said paragraph IV that any order therein referred to is now in force and effect, that for aught that appears to the contrary from the averments of the said paragraph, none of the said orders complained of or the alleged agreement is now in force and effect, and that all the allegations of the said paragraph IV are wholly irrelevant and immaterial and are not pertinent to any material issue involved in this

cause. These defendants deny that any order of the Railroad Commission of Texas now in force and effect by which the allowable daily production of oil in Texas is determined was issued pursuant to any agreement between the said Railroad Commission and conservation boards in other oil producing States and that any such order was issued for the purpose of creating an artificial demand for oil and of reducing the supply of oil below the actual consumptive demand so as to maintain a high price for oil. The defendants deny that the allowable production fixed by any such order was arbitrarily determined with a view to limiting the production of oil in Texas to approximately 900,000 barrels per day, and deny that the [fol. 32] said allowable production was fixed without regard and consideration for the producing capacity of wells and for the market outlet; but they aver that all such orders that are material herein were legally and validly issued to the end that waste as defined in the pertinent statutes of Texas might be prevented and with due consideration for the public necessity of conserving oil as a natural resource. These defendants deny that the requirements of the complainants and their facilities for handling and disposing of oil produced by them are in any respect material. These defendants aver that the total allowable production of oil for the State of Texas and the amount of production allocated to various wells of the complainants were determined by the said Railroad Commission upon the basis of the current reasonable market demand for oil in the State of Texas and the potential producing capacities of the various wells of the complainants in accordance with and with due regard for the methods prescribed by the statutes of the State of Texas.

(14) Answering paragraph V of the bill, these defendants admit that on or about April 22, 1933, the Railroad Commission of Texas issued and promulgated an order prohibiting production of oil by any well in the East Texas Oil field in any one day in excess of 15% of its hourly potential capacity as determined by the said Railroad Commission, but these defendants deny that the said order was issued and promulgated in furtherance of the alleged plan referred to in the said paragraph V or in furtherance of any plan not authorized and required by law and they aver that it was in all respects legal and valid. These

defendants admit that on June 13, 1933, the said order of April 22, 1933, was so amended by the said Railroad Commission as to reduce the allowable production per well per day to not in excess of 10% of its hourly potential produc- [fol. 33] ing capacity as determined by the said Railroad Commission; that on or about September 30, 1933, the said order of April 22, 1933, was further amended by the said Railroad Commission so as to reduce the allowable production per well per day provided by the said order of June 13, 1933, by 26% of its hourly potential producing capacity as determined by the said Railroad Commission; and that on or about October 18, 1933, the said order of September 30, 1933, was amended by the said Railroad Commission so as to reduce the allowable productions per well per day as provided in said order of September 30, 1933, by 4% of its hourly potential producing capacity as determined by the said Railroad Commission.

The defendants deny that the allowable production of wells of the complainant has been in fact reduced to .002 11/12 per cent of their true and actual potential producing capacity and that the allowable production thereof is so small as to be virtually confiscatory or is smaller than is required by public necessity.

(15) Answering paragraph VI of the bill, these defendants admit that the oil field known as the East Texas Oil Field comprises approximately 125,000 acres of land, but they have no knowledge as to the actual potential producing capacity of the said East Texas Oil Field and demand strict proof thereof insofar as such averment is material. These defendants admit, insofar as it is material, that the East Texas Oil Field is capable of furnishing the total supply of oil for the United States for several years and that some of the wells located therein flow without the aid of artificial lifting power and can supply oil at less cost than stripper fields and fields that have passed their period of flush production. The defendants deny the existence of the plan referred to in said paragraph VI; they deny that [fol. 34] the purpose of effect of any statute, order or regulation under which these defendants have been and are acting is arbitrarily to curtail the production of oil in the said East Texas Oil Field so as to enable persons engaged in the production of oil elsewhere to compete with the com-

plainants and others producing oil in the East Texas Oil Field; they deny that any such statute, order, or regulation penalizes the complainants for the benefit of producers less favorably situated, and they deny that any such statute, order, or regulation, or any act of these defendants has resulted in the denial to the complainants of the equal protection of the law.

Further answering paragraph VI of the bill, these defendants say that if the wells in the East Texas Oil Field were permitted to flow to the extent necessary to supply the total requirements of consumers of oil in the United States not only would irreparable loss and waste result therefrom through the shutting in and closing down of stripper wells contrary to the public policy of the State of Texas, as expressed in its statutes, the purpose of which is to conserve stripper wells, but also the rapid rate of flow necessary to satisfy consumer requirements of the United States from the East Texas Oil Field would result in the wasteful dissipation of the reservoir energy of the said Field and would greatly reduce the total ultimate recovery of oil therefrom.

(16) Answering paragraph VII of the bill, these defendants deny that the orders of the Railroad Commission of Texas therein complained of are not and do not purport to be conservation measures and bear no relation to the prevention of waste, and they deny that the purpose of the said Railroad Commission in issuing the said orders was to carry into effect any program other than that authorized by law.

The defendants aver that the Railroad Commission of [fol. 35] Texas has been properly authorized by statutes of the State of Texas to make and enforce such rules, orders and regulations as may be necessary to prevent waste of crude petroleum oil in drilling and producing operations and in the storing, piping and distribution thereof; that the statutes of Texas have made unlawful the production, storage, or transportation of crude petroleum oil in such manner and in such amount and under such conditions as to constitute waste which is therein defined to include underground waste, however caused, physical waste incident to and resulting from so drilling and operating wells as to reduce the total ultimate recovery of oil from any

pool, waste incident to or resulting from inefficient, excessive, or improper use of the reservoir energy, including gas energy or water-drive in any well or pool, surface waste, and the production of oil in excess of transportation and marketing facilities or reasonable market demand. These defendants further aver that the said Railroad Commission is authorized and required by the statutes of Texas to hold hearings to inquire into the production, storage, or transportation and the market demand for oil in order to determine whether waste exists or is imminent; that pursuant to such statutory authorization and requirement, a hearing was held and the order herein complained of was issued by the said Railroad Commission and that the said order is a proper and valid exercise of the powers granted to the said Railroad Commission to prevent the waste of crude oil, and that the said order is sustained by sufficient evidence introduced at the said hearing, and that it in fact purports to be and in truth is an order intended to prevent waste and that it will in fact do so.

The defendants aver that the order of the Railroad Commission of Texas restricting the allowable production of oil to the reasonable market demand in Texas is a true con- [fol. 36] servation measure and will prevent waste of oil and its products in that it will prevent unnecessary and wasteful storage of oil produced in excess of the market demand, and will prevent the premature abandonment of stripper wells and will insure a market outlet for all wells in the State, thereby insuring the ratable taking of oil from all wells in any common source of supply, which can not be accomplished by any other standard of restriction, with the result that the wasteful consequences of unratable taking in any common source of supply will be prevented, to-wit: channeling and coning and water infiltration in the producing strata in areas of excessive production, the wasteful depletion of the reservoir energy and a reduction in the total amount of oil recoverable therefrom.

(17). Answering paragraph VIII of the bill, these defendants, admit that on July 14, 1933, the President of the United States issued an executive order authorizing the Secretary of the Interior to exercise the powers vested in the President for the purpose of enforcing Section 9 (c) of the National Industrial Recovery Act and the executive

order of the President issued thereunder on July 11, 1933, including full authority to designate and appoint such agents and to set up such boards and agencies as the Secretary of the Interior might see fit, and to promulgate such rules and regulations as he might deem necessary, and admit that on August 19, 1933, the President of the United States approved a Code of Fair Competition for the Petroleum Industry, but these defendants deny that the President was without authority in any respect and aver that each said executive order was and is in all respects legal and valid.

Further answering paragraph VIII these defendants allege the Congress of the United States, in a great national emergency declared by the Congress, enacted the National Industrial Act (Public No. 67, 73rd Congress); and pursuant to its provisions, the President of the United [fol. 37] States, on August 19, 1933, approved a Code of Fair Competition for the Petroleum Industry, which is now in full force and effect with certain amendments lawfully adopted on September 13, 1933. Each of these defendants in all of their dealings with the plaintiffs herein have acted pursuant to the provisions of said law, said Code and the Rules and regulations validly issued by the Secretary of the Interior under the provisions of the aforesaid law and by lawful authority delegated to him by the President of the United States. The United States of America has an interest in the proper and reasonable conservation of petroleum and its products; such is an irreplaceable natural resource, necessary and essential for the common defense of the nation in time of war. More than 80% of the whole volume of petroleum and its products move in the channel of interstate and foreign commerce, and so intermixed, intermingled and interwoven have become the interstate and intrastate operations of the industry as that the former cannot be properly regulated without those necessary regulations prescribed by Amended Code of Fair Competition and the rules promulgated by the Secretary of the Interior by authority of the President, pursuant to provisions of Section 9 (c) and 10 (a) of Title One of the National Industrial Recovery Act, each of which are valid and lawful regulations; and all of said regulations and Code provisions, as well as the Act of Congress authorizing same, are a valid exercise of the Federal

powers, and such tend to accomplish and are accomplishing the purposes set forth in Section One, Title One of the aforesaid law.

(18) Answering paragraph IX of the bill, these defendants deny that they are acting under color of authority and aver that, insofar as they are acting at all in respect of the matters and things complained of in the bill, they are acting and have acted under and pursuant to valid orders [fol. 38] of the President of the United States, the Secretary of the Interior, the Acts of Congress and the aforesaid Petroleum Code. The defendants aver that the defendant Ryan has demanded of the complainants that they furnish to the Division of Investigations of the Department of the Interior reports setting forth substantially the information referred to in paragraph IX of the bill, but these defendants aver that in so demanding of the complainants the defendant Ryan was acting as a subordinate of the Secretary of the Interior for the purpose of carrying out and enforcing the regulations prescribed by the Secretary of the Interior in conformity with the National Industrial Recovery Act and the said executive orders of the President of the United States issued pursuant thereto, all of which the defendants aver are legal and valid.

(19) Answering paragraph X of the bill, the defendants say that under the provisions of the National Industrial Recovery Act the President of the United States on August 19, 1933, approved a Code of Fair Competition for the Petroleum Industry and thereafter on September 13, 1933, the President, in accordance with the said Act, approved certain modifications of the said Code; that a true copy of the said Code as modified as aforesaid, marked Exhibit 4, is attached hereto and made a part hereof; that on August 28, 1933, the President by virtue of the authority vested in him by Section 2 (b) of the National Industrial Recovery Act, and Section 2 of Article I and Section 1 (b) of Article VII of the said Code designated and appointed, for the petroleum industry, the Secretary of the Interior to be the Administrator and the Department of the Interior to be the Federal Agency to exercise all the functions and powers vested in the President or in any Federal Agency by the said Act and Code, a true copy of the said executive order, marked Exhibit 5, being attached hereto and made

[fol. 39] a part hereof; that thereafter the Department of the Interior has at intervals estimated the required production of crude oil to balance consumer demand for petroleum products and determined the consumer demand and thereafter the same was equitably allocated among the several states, as provided by Article III of the said Code; and recommended a figure which fairly represented the net reasonable market demand for petroleum products in Texas and each producing State; that under the Constitution and statutes of the State of Texas the said Railroad Commission has duly and legally, after hearing, and in compliance with the statutes of Texas, and in order to prevent waste, fixed and determined the market demand for oil produced in the State of Texas after due consideration of all evidence, including the recommendation of the Secretary of the Interior as to the market demand of petroleum produced in Texas; that prior to the approval of the said Code as modified and prior to any estimate of market or consumer demand, certification thereof and recommendation to the Railroad Commision of Texas by the Department of the Interior as aforesaid, the said Railroad Commission of Texas, in Compliance with the laws of Texas, on April 22, 1933, and on June 13, 1933, made and issued valid orders of allowable production of oil by wells in the said East Texas Oil Field and since the said dates vast quantities of petroleum and products thereof have been and are now stored in the said East Texas Oil Field, which petroleum was produced in violation of the said orders of the Railroad Commission of Texas.

Further answering paragraph X of the bill, these defendants admit that in accordance with the directions of the Secretary of the Interior, the defendant Ryan has demanded and is demanding that the complainants furnish to the Division of Investigations of the Department of the In- [fol. 40] terior certain information necessary in the proper and orderly enforcement of the National Industrial Recovery Act and of the said executive order of the President thereunder. The defendants aver that the information demanded of the complainants is necessarily within their knowledge and is such only as is reasonably calculated to aid in preventing transportation in interstate commerce of crude oil and the products thereof produced in violation of the laws of the State of Texas and valid orders of the

Railroad Commission of Texas applicable thereof, and that the information thus demanded is necessary to the proper and orderly enforcement of Section 9 (c) of the National Industrial Recovery Act and the said executive order of the President thereunder, and the information and reports demanded of the complainants by the defendant Ryan have been and are being demanded by him as a Special agent of the Secretary of the Interior under or pursuant to the said executive order and the said regulations promulgated by the Secretary of the Interior. The defendants Bennett and Baer have not demanded or are not demanding information or reports from the complainants.

Further answering paragraph X of the bill, defendants aver that, with respect to the Code provisions therein set forth, the plaintiffs have not shown any injury to their business of such a nature as to entitle them to injunctive relief; but in this connection the defendants allege that each of said provisions of the Code enumerated in said paragraph are valid provisions for each and all of the reasons set forth in paragraph Seventeen (17) hereof; that for the period of the emergency declared by Congress, such regulations are a valid exercise of the Federal powers heretofore mentioned and they serve to accomplish and are effecting, the declared purposes of the National Industrial [fol. 41] Recovery Act which is a valid law of Congress under the provisions of which each and all of said regulations were issued.

(20) Answering paragraph XI of the bill, these defendants say that on July 11, 1933, the president of the United States, by virtue of the authority vested in him by the National Industrial Recovery Act, issued and promulgated an executive order prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of a State. These defendants admit that they are attempting to enforce the said executive order of the President. The defendants say that they are without knowledge as to whether the complainants are engaged in shipping oil and as to whether they are engaged solely in

the business of producing and marketing oil, and demand strict proof thereof insofar as such averments are material. The defendants aver that they are without knowledge as to where oil sold by the complainants is sold by them and are without knowledge as to when the title to such oil passes from complainants, and demand strict proof thereof insofar as such averments are material. The defendants deny that the orders of the Railroad Commisssion of Texas referred to are void.

Further answering paragraph XI of the bill, the defendants aver that the regulations pursuant to which information is sought from the complainants are reasonable, proper and necessary in the enforcement of the said executive order of the President issued under and pursuant to Section 9 (c) of the National Industrial Recovery Act and that such information is sought from the complainants as [fol. 42] an essential and necessary incident to the enforcement of such executive order and the accomplishment of the purposes of the Congress in the enactment of the said Section 9 (c) and the defendants aver that the said executive order cannot be effectively enforced without the said information sought from the complainants and others similarly situated and that sources of petroleum and the products thereof illegally produced and cannot be otherwise discovered.

Further answering paragraph XI of the bill, the defendants aver that oil and gas are natural resources of a unique character; that when consumed or wasted they can never be replaced; that the maintainance of an adequate supply of crude oil and the refined products thereof is essential to the national well-being during times of peace and is a vital necessity for national defense during times of war; that the conservation of these natural resources is a matter of grave national as well as local concern; that there are only a few sources of supply of crude oil in the United States where the production is in excess of local consumer requirements; that the excess of supply over local or State consumer requirements from these sources moves, and must of necessity move, in interstate and foreign commerce; that all oil produced whether it actually moves in interstate commerce or not is commingled with oil that is moving in interstate commerce and enters into the flow or current of interstate commerce in such manner as directly

to affect the same and renders it necessary to control and regulate all production in order to preserve the orderly and proper movement of oil in interstate commerce; that the orderly movement of such production from these sources of excessive supply into interstate commerce is necessary for the proper preservation and protection of commerce between the States; that excessive production [fol. 43] from any one source of supply must be dumped upon the interstate market and leads to the demoralization of the orderly movement and of normal flow of oil and its products in interstate commerce, disrupting the industry in other localities and adversely burdening and effecting interstate commerce, and causes the wasteful shutting of thousands of wells throughout the nation and closing down of refineries, and is attended by wide-spread unemployment and destruction of property, values and aggravates the existing economic depression.

The defendants further aver that the production of oil is of such a unique character that it is not amenable to the ordinary law of supply and demand; that if one producer from a common source of supply has a market outlet for his production all the other producers from the same common source of supply must of necessity produce the oil from under their properties in order to protect them from drainage regardless of whether these producers have a market outlet for their production; that this fact causes the production and building up in certain localities of excessive stocks of petroleum and its products far in excess of consumer requirements and leads to waste of oil by evaporation in storage, and the waste that necessarily attends dumping of this excessive supply on the market. And the defendants aver that there are at this time enormous quantities of oil in storage in the East Texas Oil Field and elsewhere in the United States and that the potential capacity of the various sources of supply in this country is many times the amount required to satisfy the current needs of consumers and that unless withdrawals from storage are regulated and unless production is restricted so as not to exceed current consumption tremendous waste will result and the oil industry will be thrown into a chaotic condition [fol. 44] and interstate commerce in oil and its products will be demoralized.

The defendants further aver that the conservation of this natural resource requires that it be produced only to the extent that production is necessary to satisfy current consumer requirements; that any production in excess of this amount inevitably leads to waste and the demoralization of interstate commerce; that such restriction of production cannot be accomplished by the individual action of the various producing States but can be accomplished only by the action of the National Government in restricting the production from all sources of supply within the nation; and that only through such restriction by the National Government as provided in Section 9 (c) of the Recovery Act and Amended Article III of the Petroleum Code can the channels of commerce among the States and with foreign countries be kept and maintained open and free from demoralization.

(21) Answering paragraph XII of the bill, the defendants say that the averments of the said paragraph are so vague and indefinite that it is impossible for them to know therefrom to what order of the Secretary of the Interior the said paragraph refers or to what order of the Railroad Commission of Texas the said paragraph refers. The defendants aver that the operation and effect of the order of the said Railroad Commission now in force and effect is to prevent waste and to conserve oil, and they deny that the operation and effect of such order was or is solely to curtail the production of oil within the State of Texas, and they further deny the Secretary of Interior ordered the Railroad Commission of Texas to fix any allowable or make any allocation but allege that he only did and performed those duties imposed upon him under authority [fol. 45] of the President by Amended Section III of Article III of the Petroleum Code; and that the order of the Railroad Commission represents a valid determination by that body of the allowables set forth in the order of said Commission.

(22) Answering paragraph XIII of the bill, the defendants admit that the Secretary of the Interior heretofore issued an order effective December 1, 1933, promulgating certain price schedules applicable to petroleum and the products thereof, but they aver that the effective date of the said order has been extended by the Secretary of the Interior to January 1, 1934, and that said order provides

for hearings upon the said schedules of prices therein before the effective date hereof, at which hearings the complainants will be afforded an opportunity to object to the said order as a whole or in part. The defendants aver also that, in respect to the said order referred to in paragraph XIII of the bill, the complainants are not in any event entitled to injunction against these defendants, or any one of them and that the Secretary of the Interior is an indispensable party. The defendants aver also that sufficient facts are not alleged in the bill to show that the complainants have been or will be injured by the said order of the Secretary of the Interior. And the defendants aver that sufficient facts are not averred in the bill to entitle the complainants to any injunction on account of the said order relating to the fixing of prices. The defendants further aver that the said order of the Secretary of the Interior relating to the fixing of prices is in all respects legal and valid and avers that the complainants have not in any respect alleged its invalidity.

(23) Answering paragraph XIV of the bill, the defendants say that they are without knowledge as to whether the defendants referred to therein as State officers have informed the complainants that unless they comply with the [fol. 46] said orders of the Railroad Commission of Texas the said State officers will institute and prosecute against the complainants suits to recover penalities of $1,000.00 a day for each day that said orders are violated and will file information and cause the complainants to be arrested and prosecuted and will attempt to have fines and prison sentences inflicted on the complainants, and the defendants demand strict proof thereof insofar as such averments are material.

The defendants admit that they will perform their official duties with respect to violations by the complainants of Section 9 (c) of the National Industrial Recovery Act and the said executive orders of the President issued thereunder. They deny that irreparable injury will result to the complainants from any act of these defendants and deny that the complainants have no adequate remedy at law, and deny that they will institute and prosecute any civil or criminal action against the complainants except for violations by the complainants of a statute of the United

States or a valid order or regulation issued thereunder. The defendants deny that the defendant Ryan will institute or prosecute any action civil or criminal against the complainants, the institution and prosecution of such actions not being within the scope of his official duties.

(24) Answering paragraph XV of the bill, the defendants deny that they are engaged in a conspiracy to curtail the production of crude oil in Texas and the United States and deny that they have been so ordered by the Secretary of the Interior, and deny that any acts on their part or any orders referred to in the said bill are in furtherance of any conspiracy and deny that any such acts and orders are illegal, unwarranted, arbitrary, unjustified, null and void, and deny that any such acts and orders constitute an illegal, unwarranted, and unnecessary interference with the rights, liberty and property of the complainants, and [fol. 47] deny that any such acts will result in depriving the complainants of their property without due process of law or will cause the complainants irreparable loss or damage for which they have no adequate remedy in law.

(25) Answering paragraph XVI of the bill, the defendants say that the averments thereof are so vague and indefinite that it is impossible for them to know therefrom to which specific orders reference is made therein, but they deny that any orders of the Railroad Commission of Texas or of the President of the United States or of the Secretary of the Interior herein involved are invalid, illegal, null and void, and deny that any acts of the defendants in enforcing or attempting to enforce any such orders are illegal or unwarranted or a mere usurpation of power and authority.

Further answering subdivision (1) of paragraph XVI of the bill, the defendants deny that the National Industrial Recovery Act is null and void and denies that section 9 thereof is null and void upon any of the grounds averred to in the said paragraph or upon any other grounds.

Further answering subdivision (2) of paragraph XVI of the bill, the defendants aver that the orders of the President and the Secretary of the Interior herein involved are authorized by the National Industrial Recovery Act.

Further answering subdivision 3 of paragraph XVI of the bill, the defendants deny that Section 9 of the National

Industrial Recovery Act is void upon the grounds averred by the complainants or upon any other grounds.

Further answering subdivision 4 of paragraph XVI of the bill, the defendants say that averments thereof are so [fol. 48] vague and indefinite that it is impossible for them to determine to what orders reference is therein made. The defendants deny that any order of the Railroad Commission of Texas by its terms now in force and effect is unauthorized by law and deny that any such order was made without notice and without a hearing and deny that any such order is arbitrary, confiscatory and discriminatory, and deny that the enforcement of any such order deprives the complainants of their property without due process of law or of liberty of contract and deny that any such order deprives the complainants of the equal protection of the law in violation of the 14th Amendment of the Constitution of the United States.

Further answering subdivision 5 of paragraph XVI of the bill, the defendants deny that the statute of Texas therein referred to is void because of its operation and effect deprives the complainants and others affected thereby of their property without due process of law or because it denies to them the equal protection of the law contrary to the 14th Amendment to the Constitution of the United States, and deny that the operation and effect of the said statute of Texas is to burden interstate commerce in violation of the commerce clause of the Constitution of the United States, and deny that the said statute is so vague, indefinite, and uncertain that its meaning is not ascertainable, and denies that the said statute is invalid as an attempt by the Legislature of Texas to delegate power to regulate and curtail the production of oil, and deny that the said statute of Texas is void upon any ground.

(26) Answering paragraph XVII of the bill, the defendants deny that the penalty provisions of the National Industrial Recovery Act are null and void, and deny that the penalties prescribed therein are so excessive and dispro- [fol. 49] portionate to the offense to which they are assessed that they are a violation of the 14th Amendment to the Constitution of the United States, and deny that the said penalties are so extreme and drastic as to be calculated to affright those affected thereby from resorting to

the Courts to test the validity of the said Act, and deny that the terms and provisions of the National Industrial Recovery Act are so vague, indefinite and uncertain that it is impossible for those thereby affected to form any standard whereby they can safely know when they are violating the terms of the said Act; and the defendants aver that the National Industrial Recovery Act is in all respects legal and valid.

(27) Answering paragraph XVIII of the bill, the defendants deny that the penalty provision of the statute of Texas therein referred to and the Act of the 43rd Legislature of the State of Texas therein referred to are null and void for any reason therein set forth or otherwise.

(28) Further answering the bill, the defendants say that none of the orders of the Railroad Commission of Texas complained of in the bill and the enforcement of which is sought to be restrained and enjoined is now in force and effect, the said orders having been superseded by an order or orders issued by the said Railroad Commission subsequently to the date when this bill was filed, and the defendants aver therefore that with respect to the said orders complained of the complainants are not entitled to the relief prayed for.

(29) Further answering the bill, the defendants aver that, with regard to the orders of the Railroad Commission of Texas complained of, the complainants are not entitled to the relief sought for the reason that the statutes of Texas afford to the complainants the right to apply to a Court of [fol. 50] competent jurisdiction in Travis County, Texas, for a review of the said orders, and it does not appear from the averments of the bill that the complainants have exhausted the remedies thus afforded to them.

(30) Further answering the bill, the defendants aver that the complainants are not entitled to the relief sought against these defendants for the reason that sufficient facts are not averred to show that irreparable injury will result to the complainants from any of the matters and things complained of against these defendants.

(31) Further answering the bill, the defendants aver that the allegations thereof as a whole and in their entirety are so vague, indefinite, uncertain and redundant that

the defendants cannot ascertain therefrom with reasonable certainty the basis of the claim of the complainants for the relief sought against these defendants, and the defendants aver that a further and better statement of the nature of the said claim and further and better particulars of the complainants' alleged causes of action against these defendants ought to be ordered and the defendants pray that the Court so order.

And now having fully answered the said bill, these defendants separately and severally move that the bill and each separate paragraph thereof be dismissed and that these defendants be allowed to go hence with their reasonable costs in this behalf expended.

(Signed) Archie D. Ryan, (Signed) S. D. Bennett, (Signed) by Chas. I. Francis, (Signed) Phil E. Baer, (Signed) by Chas. I. Francis, Special Assistant to the Attorney General of the United States.

[fol. 51] Attorneys: Charles Fahy, First Assistant to the Solicitor of the Department of the Interior. Douglas Arant, Special Assistant to the Attorney General. Chas. I. Francis, Special Assistant to the Attorney General.

Duly sworn to by Archie D. Ryan. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 52] EXHIBIT 1 TO ANSWER

Executive Order

Prohibition of Transportation in Interstate and Foreign Commerce of Petroleum and the Products Thereof Unlawfully Produced or Withdrawn from Storage

By virtue of the authority vested in me by the Act of Congress entitled "An Act To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes", approved June 16, 1933, (Public No. 67,

73rd Congress), the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order, prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State, is hereby prohibited.

(Sgd.) Franklin D. Roosevelt.

The White House, July 11, 1933.

EXHIBIT 2 TO ANSWER

Executive Order

Prohibition of Transportation in Interstate and Foreign Commerce of Petroleum and the Products Thereof Unlawfully Produced or Withdrawn from Storage

[fol. 53] By virtue of the authority vested in me by the Act of Congress entitled "An Act to Encourage National Industrial Recovery, to Foster Fair Competition, and to Provide for the Construction of Certain Useful Public Works, and for Other Purposes," approved June 16, 1933, (Public No. 67, 73rd Congress), in order to effectuate the intent and purpose of the Congress as expressed in Section 9 (c) thereof, and for the purpose of securing the enforcement of my order of July 11, 1933, issued pursuant to said act, I hereby authorize the Secretary of the Interior to exercise all the powers vested in me, for the purpose of enforcing Section 9 (c) of said act and said order, including full authority to designate and appoint such agents and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary.

(Signed) Franklin D. Roosevelt.

The White House, July 14, 1933.

EXHIBIT 3 TO ANSWER

United States Department of the Interior

Office of the Secretary, Washington

The following general rules and regulations are prescribed in conformity with the requirements of the Act of Congress of June 16, 1933, known as the "National Industrial Recovery Act" (Public No. 67, 73rd Congress), and the orders of July 11 and July 14 of the President of the United States issued pursuant to such legislation.

[fol. 54] Regulations

I

Under the terms of the aforesaid act and orders petroleum or the products thereof is in interstate and foreign commerce (1) when petroleum or any of the products thereof is in the course of shipment or transportation by rail, pipe line, water, truck, or any other means of conveyance from any State, Territory or District of the United States to any other state, Territory or District of the United States, or to a foreign country, or (2) when petroleum or any of the products thereof is in any quantity or in any manner commingled with petroleum or the products thereof some part of which is in the course of such shipment or transportation, regardless of how much commingling occurs during the various processes of shipment or refining. Excess production of petroleum or the products thereof under said act and orders includes petroleum produced in excess of proration quotas, oil-gas ratio requirements or any other purported conservation measure which tends to limit, directly or indirectly, the production of petroleum or the products thereof.

II

Any producer, operator, lessee, royalty owner, or other person, natural or artificial, having an interest in any petroleum producing property, or possessing any right, title, or interest in petroleum or the products thereof, who shall ship, transport, or deliver to another for shipment or transportation or shall acquiesce in the procuring or con-

spire with any other persons, natural or artificial, to procure the transportation in interstate or foreign commerce of any petroleum or the products thereof; or any person, natural or artificial, who shall receive for shipment or [fol. 55] transportation in interstate and foreign commerce, or shall purchase for shipment in interstate and foreign commerce any petroleum or the products thereof, with the knowledge that such petroleum was produced or withdrawn from storage in violation of any law, or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of a State, shall be deemed to have violated the provisions of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the orders and regulations thereunder and shall be subject to the penalties prescribed in the Act. And each transaction shall be deemed a separate offense.

III

Because of the interrelation of interstate and intrastate commerce in petroleum and the products thereof and the direct effect upon interstate and foreign commerce of petroleum and the products thereof moving in intrastate commerce, it is essential and hereby required for the proper enforcement of the provisions of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the orders and regulations issued thereunder, that there shall be furnished the Division of Investigations of the Department of the Interior such information as respects production, purchases and shipments as is hereinafter required, regardless of whether such production, purchases and shipments are in interstate and foreign commerce or in intrastate commerce.

IV

Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifth day of each and every [fol. 56] calendar month, beginning with the period ending August 5, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following:

1. Residence and post-office address of producer.

2. Location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State agency for both the property and wells.

3. The daily production in barrels produced from each property and well.

4. A report of all sales showing the names of purchasers and transporting agencies, their places of business, and the quantity involved in each sale or shipment.

5. A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

V

Every purchaser, shipper, and refiner of petroleum or the products thereof, shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifth day of each and every calendar month beginning with the period ending August 5, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more [fol. 57] frequent intervals by the Division, which statement shall contain the following:

1. Residence and post-office address of purchaser, shipper, or refiner.

2. Place and time of receipt and the amount received, of petroleum and the products thereof.

3. The disposition of petroleum and the products thereof, including the place and time of sales, the amount sold, the destination and consignee.

4. A declaration that upon information and belief none of the petroleum and the products thereof handled has been produced or withdrawn from storage in excess of the

amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

VI

No transporting agency, whether by rail, pipe line, water, truck, or any other means of conveyance shall receive for transportation any petroleum or the products thereof unless the shipper shall furnish and the transporting agency shall receive in good faith an affidavit, sworn to before any duly authorized State or Federal officer, which shall contain the following:

1. Residence and post-office address of both the producer and the shipper.

2. A declaration that none of the petroleum shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or [fol. 58] other duly authorized agency of the State in which the petroleum was produced.

3. A recital of supporting facts including the number of barrels included within the shipment, a designation by wells or otherwise of the wells producing the petroleum shipped, the time during which such petroleum was produced and the rate of daily production during this period, together with the amount of production allowed by State law or regulations thereunder during this period of production.

4. Such other information as may be required from time to time by the Division of Investigations of the Department of the Interior, for the proper enforcement of these orders and regulations.

Provided, however, That carriers may receive from other carriers for such transportation and may transport any petroleum or the products thereof without requiring such affidavit and shall not be subject to any liability or penalty for or on account of so receiving or transporting the same.

The affidavits required by this regulation shall be filed and kept subject to inspection by the Division of Investigations of the Department of the Interior.

VII

All persons, natural or artificial, embraced within the terms of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the Executive orders and regulations issued thereunder, shall keep and maintain available for inspection by the Division of Investigation of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof.

[fol. 59]

VIII

All reports required by these regulations shall be filed with the Division of Investigations of the Department of the Interior in Washington, D. C., or with such regional agencies as may be from time to time designated by the Division of Investigations.

IX

Each and every false declaration in any statement under oath required by these orders and regulations, or each and every failure to file reports or to keep and maintain adequate records, as required by these orders and regulations, and any participation by any officer or agent of a corporation in any acts of commission or omission in performing the duties prescribed by these orders and regulations shall constitute a violation under the terms of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress).

X

These regulations may be suspended in whole or in part by the Secretary of the Interior in any region, area, field, pool, or as applied to any particular properties or wells whenever, in his discretion, he deems their application unnecessary for the proper enforcement of the said act or orders issued thereunder, but no such suspension shall relieve any person, natural or artificial, from the duty of complying with the aforesaid act and orders; these regulations

may be by him at any time amended or changed in whole or in part.

Approved and promulgated this 15th day of July, 1933.

Harold L. Ickes, Secretary of the Interior.

[fol. 60] Copy

United States Department of the Interior

Office of the Secretary, Washington

The following changes, amendments and additions are hereby made in and to the regulations of July 15, 1933, prescribed to aid in the enforcement of the orders of July 11 and 14 of the President of the United States, prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof, produced or withdrawn from storage in violation of State law or valid regulation issued thereunder:

1. Regulation IV is hereby amended to read as follows:

"Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the given field involved covering the preceding calendar month:

(1) The residence and post office address of the producer.

(2) The location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State Agency for both property and wells.

[fol. 61] (3) The daily production in barrels produced from each property and well.

(4) A report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether purchasers, consignees

or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount in storage at each place.

(5) A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced."

2. Regulation V is hereby amended to read as follows:

"Every purchaser of petroleum, shipper (other than a producer) of petroleum, and refiner of petroleum (including all persons engaged in the processing of petroleum in any manner), shall file a statement under oath sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month:

(1) The residence and post-office address of the purchaser, shipper, refiner or processer.

[fol. 62] (2) The place and date of the receipt, the names and business address of the producers and/or other parties from whom the petroleum was received, the amount received of such petroleum and the amount of petroleum held in storage or otherwise on the last day of the calendar month next preceding the period covered by the report.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of the consignees to whom delivered, the transporting agencies, and the amount of petroleum held in storage or otherwise at the end of said calendar month.

(4) A declaration that to the best of the information and belief of the affiant, none of the petroleum received and/or disposed of was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or duly authorized agency of the State in which the petroleum was produced."

3. Regulation VI is hereby amended to read as follows:

"No transporting agency whether by rail, pipe line, water, motor vehicle, or any other means of conveyance shall receive for transportation any petroleum or the products thereof unless the respective shippers and producers hereinafter described shall each furnish, and, the transporting agency or agencies shall receive in good faith, and without reasonable grounds for believing that any fact stated is untrue, affidavits sworn to before any duly au- [fol. 63] thorized State or Federal officer setting forth the information required by this regulation for the respective shippers or producers.

The following rules and classifications shall govern the furnishing of affidavits under this regulation:

Class "A" Shipments

Any shipment of petroleum, offered for shipment to any transporting agency, in the area where produced.

Class "A" shipments shall be supported by affidavits of both the shipper and the producer containing the following:

(a) The residence and post-office address of both the producer and the shipper.

(b) A declaration that none of the petroleum shipped has been produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

(c) A recital of supporting facts, including the number of barrels included within the shipment, a designation of the properties producing the petroleum shipped, the time during which such petroleum was produced and the rate

of daily production during this period, together with the amount of production allowed by State law or regulations thereunder during this period of production, and wherever the State law or regulations thereunder limiting production apply to individual wells, then a designation of the wells from which such petroleum was produced and the number of barrels contained in the shipment produced from each well, together with the daily production of each well [fol. 64] during the period when such shipment was produced.

(d) Such other information as may be required from time to time by the Division of Investigations of the Department of the Interior, for the proper enforcement of these orders and regulations.

Provided, however, That if the petroleum offered for shipment was produced on or before July 11, 1933, and such petroleum has been acquired from any other shipper and/or producer and has been purchased or otherwise acquired from many sources and areas and has been so commingled that it is impossible for the shipper to furnish the facts required in sub-paragraph (c) above, the recital of facts required in such sub-paragraph (c) may be omitted and the following statement submitted in lieu thereof:

"(c) The date and place of each transaction involving the acquisition of petroleum so commingled subsequent to June 16, 1933; the name and business addresses of the producers and/or shippers from whom such petroleum was acquired and the amount of petroleum involved in each transaction.

(c2) A statement setting forth the reasons why the information requested in subparagraph (c) above can not be furnished."

Class "B" Shipments

Any shipment of the products of petroleum when such products are, after processing or refining, offered for shipment to any transporting agency, in the area where the petroleum, which has been processed or refined, was produced.

Class "B" shipments shall be supported by an affidavit of the shipper containing the following:

[fol. 65] (a) The residence and post-office address of the shipper.

(b) A declaration that the shipper did not acquire such petroleum or the products thereof with the knowledge that such petroleum had been produced in violation of any State law, rule or regulation or aid or abet any other person in so producing the same, and that to the best of his information and belief the products of petroleum shipped have not been derived from petroleum produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer or other duly authorized agency of the State in which the petroleum was produced.

(c) Such other information as may be required from time to time by the Division of Investigations of the Department of the Interior for the proper enforcement of these orders and regulations.

Class "C" Shipments

Shipments of petroleum or the products thereof, when such shipments are made from a point outside the area where the petroleum was produced.

Class "C" shipments need not be supported by affidavit.

Provided however, That under this regulation, carriers outside of the State where such petroleum was produced may receive from other carriers for such transportation and may tansport any petroleum or the poducts thereof [fol. 66] without requiring such affidavits and shall not be subject to any liability or penalty for or on account of so receiving or transporting the same.

Provided, further, That the provisions of this regulation shall not apply to shipments of the products of petroleum by rail in less than carload lots.

Provided, further, That where shipments of petroleum or the products thereof are offered for shipment in intrastate commerce and are subsequently in any manner diverted into interstate commerce, in whole or in part, the interstate carrier may not accept for shipment such petroleum or such products unless the provisions of this regulation are complied with.

Provided further, That the term "area where produced" as used in this regulation, when applied to the East Texas field, shall comprise the area included within an 80-mile radius of Kilgore, Texas and when applied to the Oklahoma City field shall comprise the area included with a 35-mile radius of Oklahoma City, Oklahoma.

The affidavits required by this regulation shall be filed by the transporting agency and kept subject to inspection by the Division of Investigations of the Department of the Interior.

4. The following additional regulation is hereby prescr-bed to be known as Regulation XI:

"In order to carry out the purposes of said Executive orders of July 11, and July 14, 1933, and of these regulations, the word 'petroleum' when used in these regulations, singly, and separate and apart from 'the products thereof' shall be understood to mean petroleum in its crude form; and the 'products or product of petroleum' or 'petroleum product or products' shall be understood to mean such [fol. 67] products of petroleum as are ordinarily shipped or transported by pipe line, tank car, tanker, tank trucks and gasoline, naphtha, fuel oil, kerosene, distillates, road oil, gas oil, blended gasoline, refined oil, and lubricating oil."

5. The following additional regulation is hereby prescribed to be known as Regulation XII:

"Such pipe lines and gathering systems as serve areas in which producers and/or shippers are required to furnish an affidavit or affidavits with the tender for shipment of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer not later than the fifteenth day of each and every calendar month beginning with Aug. 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month;

(1) The residence and post-office address of the pipe line or gathering system.

(2) The place and date of all receipts of petroleum, the names and business addresses of the producers and consignors (principals and agents) from whom petroleum was received, and the amount received of such petroleum from each producing property properly identified.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of consignees to whom delivered, and the amount of petroleum held in storage or otherwise at [fol. 68] the beginning and end of said calendar month."

6. The following additional regulation is hereby prescribed to be known as Regulation XIII:

"When an affidavit and/or other sworn statement under oath is required by these regulations to be tendered or filed by any person, such affidavit and/or statement must be tendered or filed by the real party in interest owning, producing, purchasing, shipping, refining or otherwise dealing with the petroleum or the products thereof involved -n the transaction or transactions which are the subject of such affidavit or statement.

Provided however, That such affidavit or statement may be tendered or filed by a duly authorized agent of such real party in interest, when proof of such authorization has been filed with the Division of Investigations of the Department of the Interior on or before the date of the making or filing of said affidavit or statement."

Approved and Promulgated this 25th day of July, 1933.
Harold L. Ickes, Secretary of the Interior.

United States Department of the Interior

Office of the Secretary, Washington

Having determined that the enforcement of the Executive orders of July 11 and July 14, 1933, prohibiting the transportation in interstate and foreign commerce of petro- [fol. 69] leum and the products thereof illegally produced or withdrawn from storage, does not require the complete application of the regulations prescribed July 15, as amended July 25, 1933, pursuant to such orders, except in certain regions, the operation of such regulations is hereby limited and extended as follows:

1. Regulation VI is hereby suspended except in so far as it affects shipments of petroleum or its products from the East Texas and Oklahoma City areas, as hereinafter defined, when such petroleum has been produced in whole or in part in such areas or such products have been derived in whole or in part from petroleum produced therein.

2. The affidavits required by Regulation VI shall be furnished in duplicate.

3. The first general proviso to Regulation VI is hereby amended to read as follows:

Provided, however, That under this regulation, carriers outside of the State where such petroleum was produced may receive from other carriers for such transportation and may transport any petroleum without requiring such affidavits and shall not be subject to any liability or penalty for or on account of so receiving or transporting the same; provided, further, That with respect to the products of petroleum any carrier or carriers may receive from other carriers for such transportation such products if the affidavit required for Class "B" shipments is furnished to the originating carrier and due endorsement of its receipt is stamped upon the shipping papers.

4. The last general proviso to Regulation VI is hereby amended to read as follows:

[fol. 70] Provided further, That the term "area where produced" as used in this regulation, for the East Texas and Oklahoma City fields, respectively, shall include:

1. For the East Texas field, the counties of Upshur, Smith, Gregg, Cherokee, Rusk and Harrison in the state of Texas, and that portion of the State of Louisiana adjoining Harrison County which is included within the area described as follows (including boundary points named): Beginning at a point on the Louisiana-Texas State Line opposite the northeast corner of Harrison County, Texas, east to Mooringsport on the Kansas City Southern Ry.; thence southeast to Cash Point on the Texas and Pacific Ry. Co.; thence east to Vanceville on the St. Louis Southwestern Ry. Co.; thence southeast to Adner on the Louisiana and Arkansas Ry. Co.; thence south to Bodeau on the Illinois Central R. R.; thence southwest to Courtis on

the Louisiana Arkansas and Texas Ry. Co.; thence Southwest to Lucas on The Texas and Pacific Ry. Co.; thence west to Forbing on the Kansas City Southern Ry.; thence southwest to Keithville on the Southern Pacific Lines on The Texas and Pacific Ry. Co.; thence northwest to the southeastern corner of Harrison County at the Louisiana-Texas State Line; and thence to the point of beginning.

2. For the Oklahoma City field, the area within a 15-mile radius of Oklahoma City, Oklahoma.

5. Regulation IV is hereby suspended except in States, fields or areas in which reports are required each month from producers of petroleum under a regulation or regulations issued by any Board, Commission, Officer, or other [fol. 71] duly authorized agency of the State acting under a State proration law.

6. Regulation V is hereby suspended except in so far as it affects purchasers, shippers and refiners of petroleum, deriving such petroleum in whole or in part from the East Texas and Oklahoma City areas.

7. Regulation XII is hereby suspended except in so far as it affects pipe lines or gathering systems serving the East Texas and Oklahoma City areas.

This order shall not affect any shipment in interstate or foreign commerce of petroleum or the products thereof, produced or withdrawn from storage in violation of State law or valid regulations issued thereunder, and the penalties prescribed by these regulations and the orders of July 11 and July 14, 1933, of the President of the United States issued pursuant to the authority vested in him by section 9(c) of the act of June 16, 1933, known as the "National Industrial Recovery Act", shall remain in full force and effect.

Approved and promulgated this 2nd day of August, 1933.

Harold L. Ickes, Secretary of the Interior.

United States Department of the Interior

Office of the Secretary, Washington

Regulation V of the regulations of July 15, 1933, as amended July 25, 1933, prescribed to aid in the enforce-

ment of the orders of July 11, 1933, and July 14, 1933, of [fol. 72] the President of the United States, prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in violation of State law or valid regulation issued thereunder, is hereby amended by the addition of the following sub-paragraph to follow sub-paragraph (4) in the regulation as amended:

"(5) Such other detailed information, necessary to identify properly the source of the petroleum or its products received, as may be required from time to time by the Division of Investigations of the Department of the Interior for the proper enforcement of these rules and regulations."

Approved and promulgated this 21st day of August, 1933.

(Sgd.) Harold L. Ickes, Secretary of the Interior.

EXHIBIT 4 TO ANSWER

Executive Order

Code of Fair Competition for the Petroleum Industry

An application having been duly made, pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Petroleum Industry, and hearings having been held thereon and the Administrator having rendered his report together with his recommendations and findings with respect [fol. 73] thereto, and the Administrator having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of subsection (a) of Section 3 of the said Act have been met:

Now, therefore, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do adopt and approve the report, recommendations and findings of the Admin-

istrator and do order that the said Code of Fair Competition be and it is hereby approved.

Franklin D. Roosevelt.

Approval Recommended.

Hugh S. Johnson, Administrator.

The White House, August 19, 1933.

EXHIBIT 5 TO ANSWER

Executive Order

Administration of the Petroleum Industry

Pursuant to the authority vested in me by Section 2 (b) of Title I of the Act of June 16, 1933, known as the "National Industrial Recovery Act." (Public No. 67, 73rd Congress), and in accordance with Section 2 of Article I and Section I (b) of Article VII of the Code of Fair Competition adopted by the petroleum industry and approved by me August 19, 1933, I hereby designate and appoint, for the Petroleum industry, The Secretary of the Interior to be Administrator and the Department of the Interior [fol. 74] to be the Federal Agency, as provided by the aforesaid Act and Code of Fair Competition, to exercise on my behalf and in my stead all the functions and powers vested in me, or in any Federal Agency, by such Act and such Code of Fair Competition.

(S.) Franklin D. Roosevelt.

The White House, Aug. 28, 1933.

IN UNITED STATES DISTRICT COURT

AMENDMENT AND SUPPLEMENT TO ORIGINAL BILL—Filed Dec. 5, 1933

Amending and supplementing their original bill herein, the complainants allege as follows:

I

Since the filing of the original bill, the Railroad Commission of Texas has made, issued, promulgated and put into effect additional orders whereby they have reduced the allowable production for the East Texas oil field to

such an extent that it is only permitted to produce each day 5.4 per cent of what its capacity is in an hour. Complainants allege as a matter of fact that while said orders purport to be based on the potential producing capacity of the wells, as a matter of fact no accurate test of the potentials of the wells has actually been made, the potential used by the Commission being an estimate which was arbitrarily fixed at a figure far below the actual potential producing capacity of the wells for the purpose of enabling the Commission to more effectively execute its program of curtailment.

[fol. 75]

II

Paragraph numbered III of the original bill is amended to read as follows:

In doing the acts and things and carrying into effect the orders herein complained of, the defendants, and each of them, claim to be acting under authority of and pursuant to powers conferred upon them by the Conservation Act of the State of Texas, and also under and by virtue of authority conferred by the National Recovery Act, but as a matetr of fact they and each of them are acting without any authority whatever, and without any intent or purpose of executing the aforesaid laws, or either of them, and they are mere trespassers attempting to enforce compliance with a scheme of proration hereinafter fully defined.

III

Paragraph IV of the original bill is amended by further alleging that at the time said agreement was entered into the Railroad Commission of Texas was composed of the Honorable C. V. Terrell, the Honorable Pat M. Neff and the Honorable Lon A. Smith. Since that time, the Honorable Pat M. Neff has been succeeded by the Honorable E. O. Thompson, but the said Thompson, has adopted the aforesaid agreement and joined with the said Terrell and Smith, and is aiding and assisting them in attempting to carry said agreement into effect.

IV

Complainants further allege that the aforesaid agreement embodies a program adopted by the Oil States Advisory Committee of the American Petroleum Institute,

and that if these complainants are mistaken in their allegation that the Railroad Commission of Texas, and the individual members thereof, expressly entered into an agree- [fol. 76] ment to carry said program into effect, nevertheless they adopted said program, and in doing the acts and things herein complained of it has been their intent, and is now their intention, to carry said program into execution, without regard to the Conservation Laws of the State of Texas.

V

Further complaining, these complainants say that another purpose of said scheme of proration, as shown by its actual operation and effect, is to eliminate all competition in the mining, transportation, sale and distribution of petroleum and the products thereof, and by reason of the fact that the oil industry is now controlled by a few integrated companies, or associated groups of companies, the result of carrying said scheme into effect is to create an absolute monoply of the oil business in the hands of a group of integrated companies, which enables said monopoly to control the market demand and, as a consequence thereof, the amount of production, the price to be paid therefor, and also the distribution of the products of petroleum, as well as the price at which said products are sold to the consuming public, all of which is contrary to public policy, in violation of the Anti-Trust laws of the State of Texas and the United States.

The purpose and also the operation of said scheme has resulted in the destroying and eleminating of all foreign markets for crude oil produced in the United States, and particularly in the East Texas oil field, thereby depriving these complainants of a large market outlet which would otherwise be available. Said plan has also resulted and is now resulting in forcing independent refineries out of business, because it prevents those engaged in purchasing and [fol. 77] refining oil from exercising their liberty of contract to purchase oil in such quantities and at such prices as to enable them to operate at a profit, further destroying and depriving these complainants of markets and outlets for their oil which would otherwise be available.

A further purpose of said scheme of proration, as shown by its actual operation and effect, is to curtail the production of these complainants and all others similarly situated

to such an extent that it is impracticable for them to utilize the numerous railroads serving the East Texas oil field as mediums of transportation for transporting their oil to market, thus compelling these complainants, and all other individual and independent producers, to depend upon the aforesaid monopoly for their sole market outlet, and depriving them of a large market outlet which would otherwise be available to them.

These complainants allege as a matter of fact that the entire scheme of proration herein complained of is a plan adopted by the aforesaid monopoly to enable it to acquire complete control and domination of the oil industry in the United States, and to eliminate all competition in said industry, and that the defendants herein named are being used as mere tools of said monopoly to carry said scheme or plan into effect, and that the claim of the defendants that they are attempting to enforce the Conservation Laws of the State of Texas is a mere pretense and subterfuge, because said scheme has no relation whatever to the conservation of the natural resources or preventing waste of any kind or character. In addition to not being authorized by the Conservation Laws of the State of Texas, said scheme is directly opposed to the provisions of that Act, which require the Railroad Commission of Texas, in promulgating and enforcing any orders, to take into considera-[fol. 78] tion the detriment or benefits that will accrue to the consuming public, for the reason that the maintaining of said monopoly is depriving the public of the benefits which they would receive as the result of free, open and fair competition, and the public is being filched and robbed of enormous sums of money because it is required to pay prices far in excess of the value of the products of petroleum.

VI

Complainants further allege that as another part of said plan of proration, the defendants Railroad Commission of Texas have prohibited all purchasers of crude oil and all pipeline companies from purchasing or transporting any oil produced by complainants in excess of the amount allowed by its order, and, unless enjoined from so doing, even though it should be held by this honorable court that the orders of the said Commission restricting the production of these complainants was void, and the defendants

were enjoined from enforcing the said orders against these complainants, the complainants would obtain no relief because of the fact that the defendants would prohibit purchasers and pipeline companies from taking any additional oil from the complainants.

Wherefore, these complainants pray as set forth in their original bill, and, further, that the defendants, and each of them, their assistants, agents, servants and employees, be enjoined from interfering with any purchasers or pipeline companies, or other transportation companies, in purchasing, taking and transporting oil produced by these complainants.

Saye, Smead & Saye, W. T. Saye, Solicitors for the Complainants.

[fol. 79] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER TO AMENDMENT AND SUPPLEMENT TO ORIGINAL BILL —Filed Dec. 12, 1933

Come now the defendants, Archie D. Ryan, S. D. Bennett and Phil E. Baer, separately and severally, and for answer separately and severally to the Amendment and Supplement to the Original Bill herein filed in this cause, say:

(1) These defendants admit that since the filing of the Original Bill the Railroad Commission of Texas has made, issued, promulgated and put into effect an additional order regulating and controlling the production of the East Texas oil field, and in this connection these defendants allege that such order is a valid and lawful order under the laws of the State of Texas; that these defendants deny that said order is an arbitrary order fixed pursuant to any agreement or program for curtailment, as alleged in the Original Bill of Complaint herein filed, or in the supplement thereto, which is contrary to the laws of the State of Texas.

[fol. 80] (2) Answering paragraph II of the said Amendment and Supplement to the Original Bill, these defendants admit that they are acting under authority of and pursuant

to powers conferred upon them by the National Industrial Recovery Act, the regulations of the Secretary of the Interior thereunder, pursuant to the Presidential authority and the Code of Fair Competition for the petroleum industry, but deny that they are acting or purporting to act under and by virtue of any authority conferred upon these defendants by any laws of the State of Texas, and these defendants specifically deny that they are without any authority under the aforesaid law, regulations and Code, and deny that they are trespassers in seeking to enforce compliance with said National Industrial Recovery Act, said regulations and the Code of Fair Competition promulgated for the petroleum industry.

(3) Answering paragraph III of said Amendment and Supplement to the Original Bill, these defendants demand strict proof of each and all of the allegations therein contained, insofar as same are material, and say that they have no knowledge of any such agreement as is therein mentioned.

(4) Answering paragraph IV of said Amendment and Supplement to the Original Bill, these defendants deny that any such agreement was made and demand strict proof of said allegations.

(5) Answering paragraph V of said Amendment and Supplement to the Original Bill, these defendants deny that the purpose of the said Railroad Commission in the promulgation of the aforesaid order is to eliminate all competition in the mining, transportation, sale and distribution of petroleum and the products thereof, and deny that such proration order tends to create an absolute monopoly of the oil business in the hands of a group of integrated com- [fol. 81] panies, and deny that the effect of such proration order is to enable any monopoly of the oil business to control market demand, the amount of production, the price to be paid therefor and the distribution of the products of petroleum, as well as the price at which said products are sold to the consuming public, and these defendants further deny that the said order of the Railroad Commission of Texas is contrary to public policy or in violation of the anti-trust laws of the State of Texas and the United States, and further deny that the purpose and effect of said order has been to destroy and eliminate all foreign markets for

crude oil produced in the United States and particularly in the East Texas oil field, and they deny that such order has unlawfully deprived complainants of any large market outlet which would otherwise be available but for said order, and further deny that said plan has resulted in forcing independent refineries out of business, but on the contrary, allege that except for said regulations there would be such unregulated and uncontrolled production of oil as that a condition would be created whereby all competition in the oil business would be eliminated, except among the strongest and best financed companies in the industry, as small producers and refiners would be unable to compete in a market where the production of oil exceeded all consumers demands.

Further answering the allegations contained in said paragraph V, these defendants further deny that the purpose and effect of said proration order is to curtail the production of complainants and others similar- situated to such an extent as that it is impracticable for them to utilize the numerous railroads serving the East Texas oil field as mediums of transportation for transporting their oil to market, and said defendants further deny that complain- [fol. 82] ants have been deprived of any large market outlet which would otherwise be available to them; and these defendants further deny that said order is any part of a scheme of proration, the purpose and effect of which is to bring under the control and domination of a monopoly the oil industry of the United States, and these defendants deny that it is the purpose and effect of said order to eliminate all competition in said industry, and deny that these defendants have been used as a mere tool of said monopoly to carry said scheme or plan into effect, and they deny that the effort of these defendants to enforce the Federal law, rules and regulations and the Petroleum Code is a mere pretense and subterfuge, and deny that said regulations have no relation to the conservation of natural resources; and they further deny that they are acting in any scheme to circumvent the purposes of the Texas Conservation Act, and deny that their actions are a detriment to the consuming public, as alleged in said paragraph.

(6) Answering paragraph VI of said Amendment and Supplement to the Original Bill, these defendants admit that they are endeavoring to enforce the provisions of

Section 9 (c) of the National Industrial Recovery Act and valid orders and regulations issued thereunder and the Code of Fair Competition for the petroleum industry, but deny any knowledge of the vague and indefinite allegations contained in said paragraph VI.

Further answering the said Amendment and Supplement to the Original Bill as a whole and each paragraph thereof separately and severally, these defendants make their answer to the Original Bill a part hereof.

And now, having fully answered the aforesaid Bill and Amendment and Supplement thereto, these defendants, separately and severally move that said Bill as amended and supplemented, and each paragraph thereof, be dis-
[fol. 83] missed and that these defendants be allowed to go hence with their reasonable costs in this behalf expended.

(Signed) Archie D. Ryan, S. D. Bennett, Phil E. Baer, by (Signed) Chas. I. Francis, Special Assistant to the Attorney General.

Attorneys: Charles Fahy, First Assistant to the Solicitor of the Department of the Interior. Douglas Arant, Special Assistant to the Attorney General. Chas. I. Francis, Special Assistant to the Attorney General, Assistant to the Solicitor of the Department of the Interior.

Duly sworn to by Archie D. Ryan. Jurat omitted in printing.

[fol. 84] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AMENDMENT AND SUPPLEMENTAL BILL—Filed Jan. 25, 1934

Come the complainants and by leave of the court file this their supplemental bill and amendment to their original bill, and for cause state:

That since the filing of their last supplemental bill, and since this case was tried and submitted to the court, the Railroad Commission of Texas, under date of December 28, 1933, issued, promulgated and put into effect another cur-

tailment order, whereby the allowable production for the State of Texas was reduced to not to exceed 884,000 barrels, and the allowable for East Texas was reduced to approximately 402,000 barrels, and the allowable for complainants' wells fixed at five per cent of their hourly potential producing capacity; that this order, like all previous orders complained of by the complainants, was issued pursuant to and in furtherance of the illegal plan set forth in com- [fol. 85] plainants' bill, the purpose of said additional curtailment being to further restrict the production in East Texas in order that it will not exceed the figure fixed for East Texas by the Oil States Advisory Committee, and in order that the plan and scheme set forth in the original petition may be continued.

These complainants allege that this order is arbitrary and void for all of the reasons set forth in their original bill, and by way of amendment to their original bill they further allege as follows:

I

That each of the complainants deraign title to their respective properties set forth in the bill of complaint by mesne conveyances from the State of Texas; that under and by virtue of title granted to their predecessors in title, and which is now vested in complainants, the State of Texas has conveyed and these complainants have acquired title to all of the oil, gas and other minerals in, under and upon the lands covered by said conveyances, and under the terms and conditions of their muniments of title and the laws of the State of Texas they are the absolute owners of all the oil, gas and other minerals in and under said lands, and have the right to all of the oil and gas that can be produced and taken from said lands, and that the enforcement of the Conservation Laws of the State of Texas as they are now being enforced by the Railroad Commission impairs the obligation of contract, and deprives the complainants of their property without due process of law, contrary to the Constitution of the State of Texas and the Constitution of the United States.

II

Section g of Subdivision 1 of paragraph XVI of the original bill is amended to read as follows:

[fol. 86] "It is contrary to the eighth amendment to the National Constitution in that it imposes excessive fines and cruel and unusual punishments."

III

Complainants further allege that the attempted enforcement of the penalty provisions of the Conservation Act, and particularly Article 6036 of Vernon's Annotated Texas Statutes, and House Bill 844, Laws of 1933, 43rd Legislature (page 422, Chapter 165, Article 1112 B, Section 9, page 120, of Vernon's Annotated Revised Civil and Criminal Statutes of Texas, October 1933 Cumulative Pamphlet), and the acts of the defendants in compelling the complainants to make reports and give information and facts to be used as evidence to prosecute them, is in violation of Section 9, Article 1, Bill of Rights, Texas Constitution, and Section 10, Article 1, of the Bill of Rights of the Texas Constitution.

Wherefore, complainants pray as set forth in their original bill, and specifically for an injunction permanently enjoining the defendants from enforcing or attempting to enforce its order of December 28, 1933, and for general relief.

Saye, Smead & Saye, W. T. Saye, Attorneys for Complainants.

[File endorsement omitted.]

[fol. 87] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO ISSUES, ETC.—Filed March 7, 1934

It is hereby stipulated and agreed by and between the attorneys for all of the parties in the above entitled action as follows:

(1) That the issues tried and determined in said above styled and numbered causes were those fixed by the pleadings of the complainant Amazon Petroleum Corporation, and the replies thereto by the defendants Archie D. Ryan, S. D. Bennett and Phil E. Baer.

(2) That all of the evidence introduced by any one of the complainants should be considered as though introduced by each of them within the issues framed as described in Paragraph (1) above and that all evidence introduced by the defendants with reference to any one of the complainants should be considered with like force and effect as though introduced with reference to all of them.

(3) That said above styled and numbered causes were submitted before a Statutory Three-Judge Court under pleadings wherein said above named defendants were joined with certain State officials and at the time said cause was heard on application for temporary injunction it was stipulated that if it should be determined that said Statutory Three-Judge Court had no jurisdiction of the said named Federal defendants, the issues as between complainants and said named Federal defendants should be determined by United States District Judge Bryant upon the evidence introduced before said Statutory Three-Judge Court.

(4) That the evidence offered in affidavit form on the hearing for a temporary injunction should be considered by the Court having jurisdiction of said cause as the tes- [fol. 88] timony of the respective witnesses offered in evidence by the parties for the final determination of said cause on its merits.

In witness whereof, the attorneys of record have hereunto signed their names this 15 day of March, A. D. 1934.

(Signed) Saye, Smead & Saye, F. W. Fisher, Attorneys for Complainants. Edward Lee, Atty. Intervenor M. E. Trap. Chas. I. Francis, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 89] In United States District Court for the Eastern District of Texas, Tyler Division

In Equity No. 652

and

Consolidated Equity Cases Nos. 667, 505, 595, 621, 657 and 665

Amazon Petroleum Corporation, Barney Cockburn, E. J. Boase, Charles M. Cope and W. C. Turnbow Petroleum Corporation, Complainants,

vs.

Archie D. Ryan, S. D. Bennett and Phil E. Baer, Defendants

Statement of Evidence Under Equity Rule No. 75—Filed April 2, 1934

Be it remembered that the cause above styled and numbered, together with the above numbered causes consolidated therewith, came on regularly for trial before the above Court sitting in equity on the 14th day of December, 1933, upon the issues formed by the Bill of Complaint and the Answer thereto, and thereupon came the complainants in equity cause No. 652, Amazon Petroleum Corporation, a corporation, Barney Cockburn, E. J. Boase, Charles M. Cope and W. C. Turnbow Petroleum Corporation, a corporation, with their attorneys, Saye, Smead & Saye; and came also the complainants in equity cause No. 667, Trans-State Corporation, A. H. Tarver, Pelican Natural Gas Company, Dimham Oil Corporation, Oriental Oil Company, K. E. Merren, Canico Oil Company, Adco Oil Company, Laco Production Company, Lexena Oil Corporation, and E. J. Moran, with their attorneys, Saye, Smead & Saye; and came also the complainants in equity cause No. 505, Ortiz [fol. 90] Oil Company, Inc., and Deere Creek Oil Company, with their attorney, F. W. Fischer; and came also complainants in equity No. 657, A. F. Anding, Southport Petroleum Company, a corporation, Ironrock Oil Corporation, a corporation, Independent Producers, a corporation, and W. Holloway, with their attorney, F. W. Fischer; and

came also complainants in equity cause No. 595, Imperator Oil Corporation, Overton Refining Company, Kilgore Refining Company, K. W. P. Witt, O. L. Hastings, A. N. Landers, W. M. McVey, T. W. Owen, J. Curtis Sanford, Roy Howell, Yandell Rogers, E. J. Bartels, W. H. Wilson, T. J. Whitesides, George T. Thaggard, Arrow Refining & Producing Company, Double L Oil Company, P. D. Bolen, Carl Dunham, J. M. Lapin, G. A. Franklin, and R. S. Harper, with their attorney, F. W. Fischer; and came also complainants in equity cause No. 621, M. E. Trapp and McMurrey Corporation, with their attorneys, F. W. Fischer and W. Edward Lee; and came also complainants in equity cause No. 665, Coffman Production Company, a corporation. and Cemo Production Company, a corporation, with their attorney, F. W. Fischer; and came also the defendants, Archie D. Ryan, Special Agent of the Division of Investigations, Department of the Interior, S. D. Bennett, United States Attorney for the Eastern District of Texas, and Phil E. Baer, United States Marshal for the Eastern District of Texas, with their attorneys, and announced ready for trial.

All of the evidence was introduced under a stipulation that all of the evidence introduced by any one of the complainants should be considered as though introduced by each of them within the issues framed by the pleadings in Amazon Petroleum Corporation, et al., vs. Archie D. Ryan, et al., No. 652, and that all of the evidence introduced by the defendants with reference to any one of the complain-
[fol. 91] ants should be considered with like force and effect as though introduced with reference to all of them.

Complainants' Case

Offers in Evidence

Complainants introduced in evidence various orders of the Railroad Commission of Texas, which provided a proration schedule for the production of oil from wells in Texas. The most recent of these orders was dated November 28, 1933, and limited the total production of oil in the State of Texas to 888,000 barrels per day and the wells in the East Texas Field to 5.4 per cent of their hourly poten-

tial producing capacity as determined by the Commission.

Complainants introduced various certificates of the Secretary of Interior certifying to the Railroad Commission of Texas the allowable production for the United States under the Code of Fair Competition for the Petroleum Industry, and also certifying to the Commission the proportion of the production allocated to the State of Texas. These allocations were certified by the Secretary of the Interior to the Commission beginning August 19, 1933, and continued down to the date of trial, the last allocation for the State of Texas being 880,000 barrels, and certified to the Commission on November 23, 1933. The complainants offered in evidence in the nature of letters and telegrams from the Secretary of the Interior to the Commission requesting and urging the Commission to put these allocations into effect and requesting the cooperation of the Commission in fixing as the total Texas allowable production the figure certified as a recommendation by the Secretary of the Interior as Administrator of the Code of Fair Competition for the Petroleum Industry.

Complainants offered in evidence exchange of correspondence and telegrams between the Commission and the [fol. 92] Secretary of the Interior and the orders of the Commission showing that beginning with August 19, 1933, and continuing up to the date of the trial, the Railroad Commission adopted as the total Texas allowable production a figure which was the same as the allocation certified by the Secretary of the Interior and the Commission made its orders in conformity therewith.

Complainants introduced in evidence statements by W. C. Turnbow, president of the W. C. Turnbow Petroleum Corporation; K. E. Merren, S. D. Hunter for the Pelican Natural Gas Company; George G. Moore, District Manager of the Dimham Oil Corporation; Claude Kavanaugh, D. S. Read, president of the Amazon Petroleum Corporation, and W. R. Smith, Chairman of the Board of Directors of the Oriental Oil Company, who stated that they, or the companies for which they spoke, are producers of oil in the East Texas oil field; that their wells are capable of producing many times their present allowable without any injury

to the properties or the surrounding properties and without any waste of any kind whatsoever; that more oil could ultimately be obtained from their properties by operating on the best oil-gas ratio than under the present allowables; and that they have a present market demand for greater quantities of oil than they are at present permitted to produce. Mr. Smith also stated that the Oriental Oil Company, in addition to its producing properties, owns a refinery and nineteen filling stations; that the refinery is unable to obtain sufficient crude oil to operate it more than one fourth capacity due to the proration order; and that it will be forced to close down and discharge from employment one hundred and twenty-five employees unless it obtains relief within a reasonable time.

[fol. 93] Complainants introduced in evidence a statement by J. H. Bucklin and E. S. Weldon, who stated that they are employed by the Amazon Petroleum Corporation, one of the complainants, and the Niagara Oil Company; that on or about November 11th Mr. Behrens and Mr. Parrish, representing themselves to be agents of the United States Department of the Interior, Division of Investigations, appeared in the office of the above mentioned corporation and stated that they wanted and had been directed to secure from the file of said corporation, the records of all oil shipped by railroad from June 1, 1933 to July 15, 1933, with a statement of whether or not it was produced in accordance with the rules and regulations of the railroad commission; that said Mr. Behrens and Mr. Parrish made memoranda from the records of the destination and cost price of the oil handled during this period of time; that on a later visit said Messrs. Behrens and Parrish asked further information and wished to see vouchers or canceled checks for the payment of the oil shipped during this period; and that it was noticed that said Messrs. Behrens and Parrish had made note of the price which the above companies had paid for one of the shipments of oil, although said persons had been requested not to make any record of that price, since it represented a trade secret and although said persons had agreed not to use that information and to treat it strictly in confidence.

Complainants introduced in evidence a statement by MARK HARE, who stated that he is an employee of the Amazon Petroleum Corporation; that on various occasions, since December 1, 1933, one Mr. McGrath, who represented himself to be in the employ of A. D. Ryan and the Department of the Interior, has frequently entered upon the lease of the Amazon Petroleum Corporation; that many of these [fol. 94] visits have been in the day time and many at night; that on each visit he has appeared without permission and has gauged the tanks and inspected the lines and connections; and that said Mr. McGrath has also interrogated the lease man as to the potential tests, as to whether the wells are making b. s. and water, whether the same has been run through a centrifugal machine, and whether the tank of water on the lease was produced from the wells on said lease, all of the foregoing acts being without permission.

Complainants introduced in evidence a statement by L. B. MANLEY, J. H. BUCKLIN and E. S. WELDON, who stated that on October 10, 1933, L. B. Manley conversed with A. D. Ryan on the telephone, while J. H. Bucklin and E. S. Weldon listened at extension telephones to the conversation; that Mr. Manley asked Mr. Ryan if the Department of the Interior was assuming the police power in the East Texas Oil Field; that Mr. Ryan replied that he was cooperating with the Railroad Commission of Texas in such action; that Mr. Manley then asked if the Department of the Interior was assisting the Railroad Commission in gauging tanks and intimidating the men on the leases. Mr. Ryan denied the intimidation, but stated that he had the right to gauge the tanks without permission of the owner or owners and that he was do-ng that and would continue to do so; that Mr. Ryan also stated that he had two charges of overproduction on the lease operated by Mr. Manley and that he intended to turn the information over to the Railroad Commission, even though Mr. Manley plainly stated to Mr. Ryan that the well in question had been in the hands of a State receiver for some months and that he had nothing to do with the lease during that time; that Mr. Ryan further stated that though the total production for the period was under the Railroad Commission allowable, he had records of overproduction on certain days; that Mr. Manley ex-

[fol. 95] plained that this was caused by having to swab the well as a result of the poor operation of the property at the hands of the State receiver; and that at Mr. Manley's request, Mr. Ryan agreed to have his men desist from using abusive language to the men on the leases.

Complainants introduced in evidence a certified copy of the Code of Fair Competition for the Petroleum Industry and modifications thereto, and a certified copy of certain regulations promulgated by Harold L. Ickes on July 15, 1933, and amendments thereto, promulgated July 25, 1933 and August 2, 1933, which regulations are the same as those affixed to the Defendants' Answer as Exhibit 3.

Complainants introduced in evidence a letter from Archie D. Ryan to Sabinas Oil Corporation as follows:

"United States Department of the Interior.

Division of Investigations, Post Office Box 146, Tyler, Texas

October 30, 1933.

Sabinas Oil Corporation, P. O. Box 226, Longview, Texas.

GENTLEMEN: This office is in receipt of your E-B report for the month of September, 1933, filed with this office under Regulation IV of the Regulations issued by the Secretary of the Interior under dates of July 15, and 25, 1933.

This report shows an overproduction in excess of the proration laws of the State of Texas in the amount of 33.01 [fol. 96] barrels. Immediately advise this office in affidavit form your reasons for permitting this overproduction to occur.

Yours very truly, Archie D. Ryan, Special Agent in Charge."

Complainants introduced in evidence a letter from Archie D. Ryan to Mr. O. G. Murphy, Trustee, as follows:

"United States Department of the Interior

Division of Investigations, Post Office Box 146, Tyler, Texas

October 30, 1933.

Mr. O. G. Murphy, Trustee, Route No. 6, Longview, Texas.

DEAR SIR: This office is in receipt of your E-B report for the month of September, 1933, filed with this office under

Regulation IV of The Regulations issued by the Secretary of the Interior under dates of July 15, and 25, 1933.

This report shows an overproduction in excess of the proration laws of the State of Texas in the amount of 176 barrels. Immediately advise this office in affidavit form your reasons for permitting this overproduction to occur.

Yours very truly, Archie D. Ryan, Special Agent in Charge."

[fol. 97] Complainants introduced in evidence a letter from Archie D. Ryan to D. B. Read Pipe Line Company, as follows:

"United States Department of the Interior

Division of Investigations, Tyler, Texas

August 15, 1933.

D. B. Read Pipe Line Company, c/o D. B. Read, First National Bank Bldg., Henderson, Texas.

GENTLEMEN: Advise me fully as to the pipe lines owned and controlled by you or the extent of interest claimed by you in any pipe lines or gathering systems serving any connections in the East Texas Oil Field showing the names of the lines and the amount of stock owned by you in any corporation or company, giving the names and date that such corporation took over the properties from the other owners or corporation.

Yours very truly, Archie D. Ryan, Special Agent in Charge."

On request of the complainants, counsel for the defendants made the following admission for the record:

"Yes, I admitted at the outset and now admit that each and all of the parties defendant here and Mr. Ryan in particular, are carrying out as against these plaintiffs and will [fol. 98] carry out each and all of the duties imposed upon them under and by virtue of the regulations of the Department of the Interior that have been introduced in evidence. I admit that if we find violations from among any of these parties here, and that we have found some among them, of Article 3 of the Code, that we intend to prosecute them for violation of those sections of the Code which provide that if

one produces above the allowable production that is fixed or allocated to him by the State Railroad Commission and the evidence justifies it and the United States District Attorney thinks that the evidence does justify a case, he is going to prosecute him. We have evidence that most of these people here are violating them and we intend to start some prosecutions. * * * Now, in addition to that, we are also requiring a system of reports from producers and refiners, as is set out in order that we may get therefrom information with which to enforce the provisions of Section 9C, which is the transportation act."

Complainants introduced in evidence a statement by R. J. McMurrey, President of The McMurrey Corporation, one of the complainants, who stated that The McMurrey Corporation is the owner and operator of twenty-three producing oil wells in Rusk and Smith Counties; that said corporation sells and delivers the oil produced in tanks located upon the leases and has no control whatsoever over said oil after the same is gauged in the tanks and run into the pipe lines of the purchasers connected to its tanks. He further stated that A. D. Ryan has demanded reports from The McMurrey Corporation, as called for in Regulations IV; that said corporation has failed and refused to make such reports and to keep its books open for inspection by the [fol. 99] Agents of the Department of the Interior; that the Department of Justice has instituted criminal proceedings against him, which are now pending, and that Chas. I. Francis, has threatened and intends to prosecute him under the complaints already filed and has threatened and intends to file additional complaints against him if the said corporation continues to fail or refuse to comply with said Regulations. He further stated that Chas. I. Francis has threatened and intends to prosecute said corporation and him as its President for the violation of penal provisions of the Petroleum Code if the said corporation produces from any well on any day more oil than it is permitted to produce from such well under the orders of the Railroad Commission. He further stated that the defendant A. D. Ryan and his agents have heretofore gone upon the oil leases of the McMurrey Corporation without the consent of said corporation, or any of its officers, or agents and over their objec-

tion and protest, and have inspected its property and gauged its tanks for the purpose of ascertaining whether or not said corporation is producing more oil than that allocated to it by the Railroad Commission; that defendant Ryan has threatened to continue such acts; and that if evidence is found by said visitations and inspections that the plaintiff is producing more oil than is allocated to it by the Railroad Commission, Chas. I. Francis has threatened that he will use such evidence upon which to predicate a criminal complaint for the violation of the provisions of the National Industrial Recovery Act and the Petroleum Code.

Complainants introduced in evidence statements by A. H. TARVER, E. J. MORAN and BARNEY COCKBURN, who stated that they are producers of oil in the East Texas Oil Field; that their wells are capable of producing many times their present allowable without any injury to the properties or to the surrounding properties, or to the reservoir; that [fol. 100] more oil could ultimately be obtained from their properties by operating on the best gas-oil ratio than under the present allowables; and that they have a present market demand for greater quantities of oil than they are permitted to produce.

Complainants introduced in evidence a statement by J. H. WRIGHT, who stated that he is employed by T. O. Wright on the Amazon Petroleum Corporation's T. O. Wright lease as a royalty gauger; that from time to time persons representing themselves to be agents of the Department of the Interior, Division of Investigations, have been to see him and demanded that he submit to them his reports and records, regardless of the dates which they covered, as to the oil runs made from the wells on the above described leases; that on December 12, 1933, an Agent of the Department of the Interior, Division of Investigations, demanded that he bring said reports and records to the office of A. D. Ryan and that on doing so he was questioned by Agents of the said Department as to the various oil runs made from the aforesaid lease and wells and was particularly questioned as to the price paid for said oil, especially

as to the interest and transactions of the Amazon Petroleum Corporation.

Complainants introduced in evidence a statement by M. E. TRAPP, an intervenor in this action, who stated that he is a producer of oil in the East Texas Oil Field; that all of his production is sold in tanks on the respective leases where it is produced; that no oil is produced under contract for transportation in interstate commerce and that all deliveries are made from storage tanks on the respective leases. He further stated that he has obeyed all of the orders and regulations of and made all reports required by the Railroad Commission.

Complainants introduced in evidence statements that the [fol. 101] following producers flow the oil produced from their wells into stock tanks upon their leases and from those tanks into the lines of the Pipe Line Companies or purchasers who purchased the oil and that title to the oil passes from the producers to the purchasers as and when the oil is delivered to the pipe line companies and that the producing company has nothing to do with the transportation or disposition of the oil after it has been delivered to the purchasers.

Statement by	Producer
Fred J. Adams	Adco Oil Company
W. C. Turnbow	W. C. Turnbow Pet. Corp.
Chas. M. Cope	Chas. M. Cope
A. H. Tarver	A. H. Tarver
Barney Cockburn	Barney Cockburn and E. J. Boase
W. R. Smith	Oriental Oil Co.
Claude Kavanaugh	Trans-State Corp.
S. D. Hunter	Pelican Natural Gas Co.
George C. Moore	Dimham Oil Corporation
K. E. Merren	K. E. Merren
D. B. Read	Amazon Pet. Corp.
J. O. Ehlinger	Canico Oil Company
George W. Lyles	Laco Production Co.
Sam Cook	Lexena Oil Corp.

Defendants' Case

The defendants introduced in evidence a statement by Victor Von Szeliski, who stated that he is Assistant Chief and Chief Statistician of the Division of Economic Research & Planning of the National Recovery Administration; that he received the Bachelor of Arts degree from the University of Wisconsin in 1921; that he attended the graduate schools of the Catholic University of Washington, D. C. (1921-22) of the University of Wisconsin (1922-23) [fol. 102] and of Columbia University (1923-25) and that he has been employed by the United States Rubber Company, Federal Reserve Bank of New York and Lehman Corporation, being in each case engaged in commercial and economic research. He further stated that the National Industrial Recovery Administration was necessitated by the serious national emergency confronting the country in 1932 and 1933; that in the emergency the railroads handled 250 billion ton-miles of freight in the twelve months preceding March, 1933, compared with 450 billion tons in 1929; that the banking system was closed down because its assets became frozen; that at least 25% (12 million) of those employed in 1929 were out of work in 1933; that wage rates decreased, prices dropped and bankruptcies occurred; that public and private relief programs amounted to over one billion dollars in 1932; and that, though certain industries held up, in others wage rates and prices went lower in a self-regenerating chain of cause and effect, the so-called "descending spiral." He further stated that during the depression wages fell so that in February and April, 1933, many sections of American industry paid less than $12.50 a week ($650.00 per year), for example: food manufacturing industries $12.18; a large branch of the Textile Industries $9.89; another branch of the Textile Industry $12.06; a third branch $11.69; one branch of the clothing industry $9.47; another branch $9.16; one branch of the metal products industry $12.18; another branch $12.22; one industry making household articles $11.96; one branch of the house furnishing industry $12.60; one branch of forest products industry $10.39; another industry closely allied to lumber products $10.28. He further stated that the purposes of the National Industrial Recovery Administration are:

First: "To remove obstructions to the free flow of inter- [fol. 103] state and foreign commerce which tend to dimin-

ish the amount thereof; * * * to promote the fullest possible utilization of the present productive capacity of industries; * * * to increase the consumption of industrial and agricultural products by increasing purchasing power; to reduce and relieve unemployment."

Second: To reform, rehabilitate and reorganize industry, or, in the words of the Act,

"To provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups; to induce and maintain united action of labor and management under adequate governmental sanctions and supervision; to eliminate unfair competitive practices; * * * to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

Third: By implication to restrict production in the few instances where it may be desirable, this implication being drawn from the following words in the Act:

"To avoid undue restrictions of production (except as may be temporarily required)."

He further stated that though it is a commonly accepted theory that overproduction is adequately controlled by a fall in prices which automatically reduce production, this is not true in certain industries, as in the petroleum industry, for the following reasons:

First: A large number of independent competitors strive to secure enough business to keep their plants in operation when prices fall, thus adding to the production rather than reducing it.

Second: Fixed charges on the investment and the fact [fol. 104] that oil must be taken from the ground in order to prevent others from taking it, result in price not being a controlling factor in the production of petroleum.

Third: A drop in the price of oil does not result in an increase in demand to any extent.

Fourth: Other factors besides price, such as national income and the physical requirements of motor vehicle transportation, determine the demand for petroleum products; and that it is therefore necessary for there to be gov-

ernment regulation of petroleum production in order to prevent overproduction.

He further stated that the wage scale in the petroleum industry cannot successfully be raised unless overproduction is curbed so that producers can receive an adequate return on their investment.

The defendants introduced in evidence the statement of SOLOMAN BARKIN, who stated that he received the degree of Bachelor of Social Science from the College of the City of New York in 1928, the degree of Master of Arts from Columbia University in 1929; that he has been an instructor in Economics at the College of the City of New York since 1928; that he was Assistant Director of Research for the New York Commission on Old Age Security in 1929-30 and Assistant Research Director on the Continuation Committee for the New York Commission on Old Age Security; that he was Special Consultant on the President's Committee on Special Trends in 1932 and that he has been Technical Labor Adviser of the National Recovery Administration in 1933; that he is the author of two books on Old Age Security, namely "Old Age Dependency" and "Older Workers in Industry"; and that, through this experience, he has become fully conversant with the problems of labor [fol. 105] and with prevailing conditions prior to and during the administration of the National Recovery Administration. He further stated that the collapse of the industrial structure and unbridled competition resulting in profitless production and excessive losses had brought about an increasing inability on the part of industry to maintain the work force and an increasing demand to lower the return to labor; that as the depression continued, unemployment increased to an estimated number of 3,200,000 in 1930; that in March, 1933, only 55% of those employed in the manufacturing industry in 1926 remained on the pay roll; and that in the following industries employment in 1933 amounted to the following percentages of those employed in 1929:

Industry	Percentage of 1929 employment	Months in 1933 used as measure
Anthracite Coal	40%	June
Bituminous Coal	61.2	May
Quarrying	34.8	February
Crude Petroleum Producing	56.5	March
Telephone & Telegraph	68.1	August
Power & Light	76.9	March
Motor Bus & Elec. Railroad	69.1	May
Wholesale Trade	73.1	March
Retail Trade	71.4	March
Hotels	71.9	April
Canning & Preserving	33.2	March
Laundries	73	March
Dyeing & Cleaning	70.9	February

He further stated that total unemployment reached an estimated number of 13,689,000 upon whom millions of others depended for sustenance and maintenance; that many of those retaining employment were very irregular so that the average number of hours per week dropped [fol. 106] from 49.1 hours in the first quarter of 1929 to as low as 33.2 hours per week; that at the same time workers were employed for unlimited and unregulated numbers of hours per day resulting in sweat shop conditions and reducing the high standards of working conditions of American labor. He further stated that hourly rates of wages between 1929 and 1932 were reduced, according to the United States Bureau of Labor Statistics, some 20% and, according to other estimates, from 20 to 30%, and that in some cases wages have fallen to as low as 5¢ an hour, or 50¢ for a full day's work of ten hours; and that the weekly earnings of workers in the manufacturing industries averaged $27.50 in 1929 and $15.87 in March of 1933. He further stated that one of the chief purposes of the National Recovery Administration is to restore the position of the worker.

The defendants introduced in evidence a statement by J. Howard Marshall, who stated that he is a member of the Petroleum Administrative Board of the Department of the Interior; Assistant Solicitor of the Department of

the Interior, and a member of the Stabilization Committee of the Petroleum Division of the American Institute of Mining and Metallurgical Engineers; that he is the author of articles dealing with the petroleum industry and has been engaged for the past four years in making a special study of the economic and legal aspects of proration as applied to the oil industry; and that he is the author of special studies on the legal and economic aspects of oil proration. He further stated that interstate commerce in petroleum and its products is carried on between all of [fol. 107] the State of the United States and between the United States and foreign nations; that the petroleum industry is the nation's third largest industry, employing over a million men and having a capital investment of from twelve to fifteen billion dollars; that the entire industrial system of the United States literally runs on oil; that petroleum is a wasting asset, limited in amount and for which there is no known substitute; that crude petroleum is produced in large quantities in eighteen states, but principally in the States of California, Texas and Oklahoma; that petroleum is produced by piercing the cap rock which has trapped confined crude petroleum, usually together with natural gas and water; that in the early stages of production of a well the natural pressure brings the oil to the surface, but that the well changes from a "flush" well to a "pumper" or "stripper" well when the pressure decreases and it becomes necessary to raise the oil to the surface by the use of pumps. He further stated that oil in the underground reservoir is fugitive in nature and may be brought to the surface through wells drilled in various parts of the pool so that one well drains from all parts of the reservoir; that the oil is further commingled when it is brought to the surface and shipped through common pipe lines or mixed with other oil by truck, rail or water carrier; that refining centers are connected with a number of sources of supply and commingle the oil received from such sources; that many petroleum products are moved from refining center to refining center and the products further intermingled; that petroleum products are further intermingled during distribution and consumption; and that there is practically no point in the entire process of movement from well to consumer anywhere in the United States which is not physically interconnected and

interrelated with a whole series of other points in the [fol. 108] chain of commerce of petroleum and its products between the States and with foreign nations. He further stated that at least 90% of all the petroleum and products thereof produced in the United States is produced with the expectation and is actually shipped into interstate and foreign commerce, and that it is almost never possible, after petroleum leaves the well, to ear-mark the ultimate destination of all the many products which will ultimately be refined from it.

He further stated that in addition to the physical interconnection existing between wells within a pool, pools and fields within a state, and states as between states, there is an economic interconnection and interrelation, due to the fact that 60% of the petroleum and products thereof sold to the ultimate consumer in the United States is brought to the market by integrated companies which produce, transport, refine and market petroleum and its products; and that the action of any ostensible local unit of the industry directly affects the economic position of these large intergrated companies operating in the said trade area and is transferred throughout those companies so as directly to affect commerce in petroleum in and between all the various states in which those companies operate. He further stated that the fact that drainage can and does take place as between different operators in all of the various oil pool distinguishes the production of oil from all other mining operations since any single operator has the power to set the rate of taking for all other operators draining from the same source of supply in order that they may acquire their fair share of the oil in the common pool; that this leads to a wild scramble on the part of all producers from a common source of production; that with the discovery of the new pools near Oklahoma City, the Kettleman Hills Field in California and the enormous pool in East Texas, the potential production of petroleum ex- [fol. 109] ceeds by many millions of barrels the consumptive demand thereof; that geologists and petroleum engineers all agree that the flush condition from these pools will decline and that the large potentials are abnormal and of temporary duration; that the control of the individual well is the focal point for the purpose of protecting the normal movements of commerce in petroleum and the prod-

ucts thereof, and that when the control over the individual wells breaks down, as it has in the past in Oklahoma and East Texas, interstate commerce in petroleum is disrupted and the normal flow from other states is impeded.

He further stated that whether an individual operator produces oil which moves in interstate commerce or not, he affects interstate commerce when he refuses to abide by curtailment, for there are always those in any large field who do and must move the product of their wells in interstate commerce, and these operators must either abide by curtailment and see their lands drained or they must violate the curtailment program and place on the interstate market their excess production; that unless the integrated companies are limited in their production of oil, they will be able to produce from their own wells all of their crude oil requirements, thus eliminating the present market which many small producers have in sales to the integrated companies; and that conditions in the East Texas Field during the past year have showed that uncontrolled production leads to monopoly and hardship to small producers. He further stated that any production of oil in excess of normal consumptive requirements exerts a demoralizing effect upon interstate commerce in petroleum, even though such excess production does not move beyond the confines of the State, since it makes its appearance on the market as "distress" gasoline, compelling competitors [fol. 110] to seek markets in other states by price cutting or dumping; that excess oil production during the last few years in one or two fields in Texas and Oklahoma has demoralized the markets for petroleum and gasoline as far West as the Pacific Coast, as far North as Chicago and as far East as New York and that the chaotic condition and other demoralization of the oil industry existing just prior to the adoption of the Code of Fair Competition reacted adversely upon the flow of interstate commerce and the industry generally by decreasing purchasing power and throwing out of employment many of those in and related to the industry. He further stated that the restriction of production to balance consumptive demand has restored the normal flow of interstate commerce in petroleum and that without the maintenance of such control there is grave danger that uncontrolled production from

any of the flush fields in Texas, Oklahoma or California might completely prevent the flow of interstate commerce from any one or all of the other states.

He further stated that uncontrolled production results not only in disruption of the free flow of interstate commerce, but also in physical waste because it results in inefficient refining methods which extract only 20 to 25% of the gasoline content from crude oil, in the abandonment of wells and fields of settled production in other oil producing states and in the loss of natural gas and natural gasoline. He further stated that the events of the past few years have demonstrated that the states alone cannot embark upon a proper conservation program, since any one of the large producing states can absorb the portion of the national market which restrictions on production in the other states leave open; that when enforcement broke down in the East Texas Field it completely demoralized the conservation program in Oklahoma City; and that it is essential from a national point of view that a program of con- [fol. 111] servation be carried out, since there is but ten years of known supply of crude petroleum and not only commerce but also the national defense depend upon this supply.

The defendants introduced in evidence a statement by W. B. Hamilton, who stated that he has been engaged in the oil business for about eighteen years; that he is interested in production and leases in the East Texas Field—22 wells in Conroe—four wells, and in the South Texas, North Texas, Panhandle and Central West Texas Field; that he also owns producing royalties in East Texas, South Texas, North Texas and the Panhandle; that he was formerly President of the Texhoma Oil and Refining Company, a large independent oil refinery; that he was Vice President of the Texas Division of the Mid-Continent Oil and Gas Association for many years and also Vice President of the Western Petroleum Refiners Association; that he is a graduate of the University of Texas and held a graduate fellowship and taught in the Government Department of the University of Texas; that while President of the West Texas Chamber of Commerce he made a careful study of production in West Texas, with reference to conservation,

and as Chairman of the Oil & Gas Committee he has made a careful study of marketing of crude petroleum and gasoline, particularly with relation to West Texas; that he has operated in many of the major pools of the Southwest and is familiar with the production, transportation, refining and marketing of oil; and that he is familiar with the theory and practice of petroleum engineering.

He further stated that the Petroleum Industry is one of the large industries in the United States, with an investment of approximately twelve billion dollars; that in 1932 eight hundred million barrels of oil were produced and four [fol. 112] hundred million barrels of gasoline; that there were about three hundred twenty-five thousand producing wells scattered over four million acres of oil lands in nineteen states; that there were four hundred refineries and approximately three hundred and twenty-five thousand marketing outlets; that oil is a vital factor in the economic and social life of the United States in supplying over twenty-five million motor vehicles, as well as warships and airplanes; that its products find their way into the manufacture of many commodities necessary in the daily life of the people; and that petroleum is as essential to national defense so that the entire nation is concerned with its conservation.

He further stated that about twenty integrated companies, whose activities encompass the entire industry, produce about fifty per cent of the crude oil, control sixty-three per cent of the refining capacity and ninety per cent of the pipe line systems, and either own, lease or control the greater part of the market outlets; and that there is the fiercest sort of competition throughout the industry, particularly in the retail end of the industry. He further stated that ninety-five per cent of the country's crude oil is produced from the states of Texas, California, Kansas, Oklahoma, Louisiana, and the states bordering the east of the Rocky Mountains; that a large part of the western production is transported to the large consuming areas in the East, where it is refined and where seventy per cent of the gasoline produced in the country is consumed; that the northeastern states consume about thirty-six per cent of petroleum products and that in many instances where oil is refined in Texas and Oklahoma, the refining operation is not completed there, but the oil shipped East for additional refining into various by-products.

He further stated that only fifteen per cent of the oil produced in Texas is consumed there, while eighty-five per [fol. 113] cent of the petroleum, or the products thereof originating in Texas, move in interstate commerce; that to the stream of commerce almost every producer and refiner in Texas contributes to some extent; that for practical purposes it is nearly impossible in the petroleum business to separate strictly interstate transactions from those intrastate in nature, because the whole is interrelated so that it can truthfully be said that the petroleum business is a national one whose bounds go beyond state lines; that conditions existing in a particular field immediately and directly affect producing, refining and marketing in widely scattered areas over many different states, for example, excess production from flush wells in Texas causes the abandonment of stripper wells in Oklahoma; that the business of marketing petroleum and its products is so interrelated that an unbalanced supply in any area immediately reacts and reflects upon reproducing and refining and marketing movements in many states; that it is definitely proved that the prohibition of excess oil from transportation in interstate commerce, as provided by Section 9 (c) of the National Industrial Recovery Act, is not only beneficial to the industry as a whole, but is necessary as a regulation of interstate commerce if overproduction is to be stopped; that a central authority to ascertain national consumptive demands for controlling products as povided by Article III Section 4 of the Code, is necessary to stabilizing commerce, since it is impossible for the individual states to divide national consumptive demands among them without supervision, and that when a state's fair share of the market is determined and submitted to the state regulatory body for consideration in fixing the allowables for the state, a fair method is used by which the orderly flow of interstate commerce is insured.

He further stated that there has been widespread waste [fol. 114] of the oil reserves due to lack of correlation between the states' conservation policies and to the fact that oil is of a fugitive nature leading to a race for capture regardless of demand or price; that such competition for production occurs in every field and that eventually the states themselves indulge in the same race for capture of the nation's demand; that oil thus wasted is forever lost; that

stripper wells are abandoned; and that Section 9 (c) of the National Recovery Act and Article III of the Petroleum Code are measures which will regulate the business in such away as to prevent such disruption of interstate commerce and waste of a national resource.

He further stated that overproduction results in lowering the price structure; that in recent years prices have twice dropped from a high of $1.40 to $.25 a barrel; that in the East Texas Oil Field the price reached as low as $.10; that such overproduction resulted in "distress" gasoline being placed upon the market at prices far below actual cost; that overproduction beyond consumer demand causes price cutting, rebates, and unfair marketing practices in general throughout the nation; that overproduction is usually followed by under-production because of depletion of the pools with resulting high prices to the detriment of the public; that price fluctuations exert an abnormal influence on interstate commerce; that restricting production to market requirements benefits both producers and consumers, promotes the orderly flow of interstate commerce, and conserves natural resources; and that the provisions of Article III of the Petroleum Code are effective as a means of regulating and controlling the disastrous conditions above outlined.

He further stated that the large integrated companies are better able to weather final price fluctuations than small [fol. 115] producers, refiners and marketers and that therefore unregulated production tends to produce monopoly.

He further stated that "hot" oil is ordinarily secretly delivered to refineries in the locality where produced and at a price substantially below the established posted price for crude oil in the locality, for example $.40 per barrel, while the posted price is $1.00 per barrel; that refiners, purchasing "hot" oil have been able to manufacture gasoline at a much less cost than the cost of the legitimate refiner and can, therefore, undersell legitimate refiners in the market; that such underselling leads to a nation-wide price cutting spreading from community to community and from state to state; that gasoline from "hot" oil by East Texas refineries has depressed the tank wagon price of gasoline in North Texas and in Oklahoma to a point below the cost of production; that gasoline can be refined from crude oil with a plant requiring the investment of a very

small sum of money, but that the output of such plant can disrupt the entire price structure throughout the country; that a tender for sale of not more than five cars of gasoline by a refiner in North Texas at "distress" prices has in the past broken the tank car market throughout the mid-continent area, and that Section 9 (c) of the National Industrial Recovery Act and Article III of the Petroleum Code are effective means for preventing the above mentioned evils.

He further stated that he knows of no way to check these sources of "hot" oil except by a series of reports from producers and refiners and that this method is a certain, useful, practical and reasonable method of locating the origin of "hot" oil, and its products which move in interstate commerce.

He further stated that a fair and reasonable method of fixing the total allowable production for the State of Texas [fol. 116] is to fix the maximum at the figure recommended by the Department of the Interior since such figure, in his opinion, represents a fair allocation of the Texas proportion of the national consumptive demand; that the provisions of the Petroleum Code are fair and reasonable regulations of a business which is essentially national in its nature and that it is — alleviate the economic distress which has befallen the oil industry and the nation as a whole; and that it has helped prices, decreased unemployment and added to consumers' purchasing power.

The defendants introduced in evidence a statement by Roy B. Jones, who stated that he is President of the Panhandle Refining Company; that he has been engaged in the business of producing, transporting, refining and marketing crude oil and its products for about twenty-one years; that he is familiar with the various oil fields of Texas and the usual methods of developing such fields and by which the oil is thereafter transported, refined and marketed; and that in addition to his practical experience he has made a careful study of the oil business throughout the United States and has served upon numerous committees of various local, state and national associations and in such capacity has acquired detailed knowledge of the conditions ex-

isting in various branches of the oil business and the problems arising in connection therewith, and he further stated in substance the same matters which are found in the statement of Mr. W. B. Hamilton, outlined above.

The defendants introduced in evidence a statement by J. S. BRIDWELL, who stated that he is the President of the [fol. 117] North Texas Oil-Gas Association composed of independent oil operators of North Texas; that he owns the Bridwell Oil Company, which has production in East, North and Southwest Texas and Southern Oklahoma; that he has been engaged in the oil business for about fifteen years; that he has served on special committees of various oil associations for many years, engaged in the study of the problems of the oil business; that he is now producing on his holdings about 1,500 barrels of oil per day; and that he has acquired a rather detailed knowledge of the conditions existing in the various branches of the oil business and the problems arising in connection therewith. He further stated, in substance, the same matters which are found in the statement of Mr. W. B. Hamilton, outlined above.

The defendants introduced in evidence a statement of C. L. THOMPSON, who stated that he is a graduate mining engineer; that from 1914 to 1917 he did general geological work in structural mapping of prospective oil structures; that in 1917 he began drilling contracting and has personally drilled and supervised the drilling of some sixty-five wells in various states and has been connected with producing, refining and operation of oil properties in various states; that he is now engaged in producing oil in the East Texas Field, operating 19 wells; and that by his study and experience, he has acquired a rather detailed knowledge of the conditions existing in the various branches of the oil business and the problems arising in connection therewith. He further stated in substance the same matters which are found in the statement of Mr. W. B. Hamilton, outlined above.

[fol. 118] The defendants introduced in evidence a statement by J. D. COLLETT, who stated that he is President of the O'Keefe & Collett Corporation, an oil producing company; that he is also operating as an individual producer; that he first became active in the oil business in 1901; that since 1917 he has devoted his entire time to and has been continuously interested and active in the management of oil properties; that during the past fifteen years he has had access to the current statistical reports conditions and has been a student of conditions pertaining to the oil business and that by his study and experience he has acquired a rather detailed knowledge of the conditions existing in the various branches of the oil business and the problems arising in connection therewith.

He further stated in substance the same matters as are found in the statement of Mr. W. B. Hamilton, outlined above.

The defendants introduced in evidence a statement by WIRT FRANKLIN, who stated that he has been engaged in various branches of the oil industry for twenty years and has been for six years an official of the Wirt Franklin Petroleum Corporation, a corporation engaged in the producing, refining and marketing divisions of the industry; and that he is particularly familiar with the production and marketing of crude oil and with the refining and marketing of refined products thereof.

He further stated that for the past twenty years new oil fields of large production have been discovered from time to time; that the production from such fields has been [fol. 119] practically unrestrained; that the invariable result of bringing in a new field has been that within a short time the price of crude oil has been materially reduced with unfavorable reactions upon the production, marketing and sale not only of crude oil, but also of the refined products; and that the following are a few of the large number of instances where new fields have resulted in drastic reductions in the price of crude petroleum:

First: In 1913 and 1914 the Cushing and Healdton pools in Oklahoma reduced the posted price of crude oil from $1.05 per barrel to 30¢ per barrel for Healdton crude and 40¢ per barrel for Cushing crude and further resulted in such oil being sold below the posted prices.

Second: In 1922 the Mexia and Powell Fields of Texas resulted in a reduction of the price of Mid-Continental crude from $3.50 a barrel to as low as $1.00 a barrel.

Third: In 1923 the Signal Hills at Santa Springs Fields in California resulted in a reduction from $2.00 to $1.00.

Fourth: In 1927 the Seminole Fields in Oklahoma resulted in a reduction from $1.90 to $1.28 per barrel.

Fifth: In 1931 the East Texas Field caused a drop in the price from 95¢ to a posted price as low as 18¢ per barrel. In the latter part of 1932 and in 1933 the restraints placed upon the East Texas Field were largely relaxed and excess production resulted in a drop in the posted price from 92¢ to 25¢ and many companies withdrew all posted prices and bought in the open market for as low as 5¢ a barrel.

He further stated in each of the cases above outlined the cheap oil from the flush fields absorbed a great portion of the markets of the United States, causing the older fields [fol. 120] to be without a market outlet and forcing them to sell their oil, if at all at less than the cost of production; and that this resulted in abandonment of thousands of "stripper" wells, with the result of permanent loss of a source of supply because many of the abandoned wells became flooded with water to such an extent as to make the wells useless.

He further stated that petroleum is produced in the United States from approximately 330,000 wells in about twenty states and that approximately 300,000 of these wells produce 5 barrels or less, while 250,000 produce an average of 1 barrel per well per day; that there are a number of large fields in the United States the production of which, if unrestrained, would cause a great decrease in the market price of oil; and that among these is the East Texas Field, which could supply at very low cost the entire United States market with the result of absorbing the markets of other fields to a very great extent, compelling the shutting in of stripper wells, the disruption of interstate commerce, great increase in unemployment and the temporary abandonment and shutting down of many refineries and pipe lines.

The defendants introduced in evidence a statement by RALPH T. ZOOK, who stated that he has been engaged in the oil business for twenty years; that he has been engaged in manufacturing natural gasoline, in owning and leasing tanks cars, and in the production and refining of crude oil; that he is associated with a company known as Sloan & Zook, one of the largest producers of Pennsylvania Grade Crude oil; and that the following statements are based [fol. 121] upon his experience and knowledge of conditions which prevail in the industry. He further stated that when fields are first brought in, they produce for a period of time as "flush" wells, without the necessity of raising the oil by pumping; that in recent years the Oklahoma City pool and the East Texas pool have been of this type so that great difficulty has existed for State authorities to control their production because of competitive drilling; that in August, 1931, the East Texas Field had a reported daily output of over 1,000.000 barrels, while the Oklahoma City pool was producing hundreds of thousands of barrels per day; that when a flush field is allowed to overproduce and monopolize the market, it over-supplies the market and forces all of the other wells, where the unit cost of production is higher, to be shut in or completely abandoned. He further stated that when a well is abandoned or shut down, its oil is at least temporarily removed from the channels of trade and often completely lost because of water intrusion. He further stated that of the 350,000 producing wells in the United States 192,000 are located East of the Mississippi River, with an estimated reserve of 1,500,000,000 barrels; that these Eastern wells employ many thousands of men and supply many refineries; that the major portion of such wells are owned by individuals of moderate means who cannot afford to produce them when the cost of lifting oil exceeds the price of crude oil; that according to Report No. 30 of the United States Tariff Commission, dated March 3, 1931, the production cost per barrel for 1930 for these States east of the Mississippi was as follows:

[fol. 122] United States Tariff Commission Production Cost

Pennsylvania	$2.77
West Virginia	1.83
New York	3.06
Kentucky	1.51
Ohio	1.98
Illinois	1.25
Indiana	1.74
Weighted Average	2.11

He further stated that during the month of July, 1931, when production from East Texas was out of control, the price of oil in Pennsylvania was $1.55, the lowest quoted price for more than ten years; that during the month of May, 193-, when production in the East Texas Field had increased to over 1,000,000 barrels a day, the price of Pennsylvania crude was reduced to the extreme level of $1.22 per barrel; that the prices for crude oil in other Eastern producing areas were correspondingly affected. He further stated that there is a definite relationship between the price of crude produced in the flush areas and the price of crude produced in settled areas; that price changes generally originate in the West and travel East; and that the price relationship which has existed between the quoted price for 36 gravity Mid-Continent and the States of Pennsylvania, West Virginia and Kentucky is as follows:

Western Kentucky

	Average price	Mid-Continent 36° gravity	Diff.
1929	$1.69	$1.37	$ .32
1930	1.49	1.23	.26
1931	.77	.63	.14
1932	1.00	.89	.11
1933 (8 Mos)	.62	.45	.17

[fol. 123] Pennsylvania-Bradford District

	Average price	Oklahoma 36° gravity	Diff.
1928	$3.36	$1.31	$2.05
1929	3.95	1.37	2.58
1930	2.60	1.23	1.37
1931	2.02	.63	1.39
1932	1.88	.88	1.00

West Virginia

	Average price	Oklahoma 36° gravity	Diff.
1925	$3.37	$1.87	$1.50
1926	3.36	2.13	1.23
1927	2.75	1.38	1.37
1928	2.91	1.31	1.60
1929	3.52	1.37	2.15
1930	2.24	1.23	1.01
1931	1.55	.63	.92
1932	1.53	.88	.65
Average	2.65	1.35	1.30

That these schedules show plainly the differential which existed during the period of controlled production, compared to that which existed during the periods of flush field production. He further stated that crude oil from the Gulf Coast points is shipped to the Atlantic Seaboard where it is refined and the products come in competition with the crude produced in New York, Pennsylvania, West Virginia and Kentucky and that Mid-Continent crude is transported by pipe line to Pennsylvania, Ohio and Indiana, where it is refined and the products placed in competition [fol. 124] with the refined products from the crude products in those states. He further stated that the average production per well in the states of New York, Pennsylvania, Kentucky, West Virginia, Illinois, Indiana and Ohio is less than one barrel per well daily; that during the period from 1930 to the middle of 1933, it had not been possible to find a market for all of this production, due to the pressure of oil from other areas; that because of low prices prevailing in the industry, only 6,788 wells were drilled in settled fields in 1931, whereas, there were 11,640 wells completed in 1930, while approximately 22,000 in settled areas were abandoned; that, in his judgment, due to the oil produced in settled areas moving in interstate commerce, a shutting down of these wells interferes with the customary flow of oil in interstate commerce; that numerous refineries depend upon the production from these wells and the refined products from these refineries move in interstate commerce; and that the shutting down of the wells and the refineries and numerous allied industries which supply them would throw out of work many employees.

The defendants introduced in evidence a statement by JOSEPH G. STANLEY, who stated that he is an attorney engaged in the practice of law in Washington, D. C.; that he is one of the counsel for the planning and Co-ordinating Committee provided for under the Oil Code and that the following statements and figures are compiled from data contained in the report of the United States Bureau of Mines for 1932 and 1933. He further states that total domestic production of crude oil in the United States for 1932 amounted to 781,845,000 barrels; that 41,500,000 were pro- [fol. 125] duced in states East of the Mississippi River; that the States of California, Oklahoma and Texas provide over 84 per cent of the total; that in the area East of the Mississippi River there exists 70 per cent of the population of the country, 70 per cent of the automobile registrations and 70 per cent of the gasoline consumption, and that in 1932, 300,000,000 barrels of domestic crude oil, or 38 per cent of the total production, was refined in these states. He further stated that in 1932 the State of Texas produced over 311,000,000 barrels of crude oil and received from other states 23,000,000 barrels; that it delivered 143,000,000 barrels, or 46 per cent of the total production to states East of the Mississippi; that Texas produced 96,000,000 barrels of gasoline, or 22 per cent of the total amount of gasoline refined in the United States; and that it delivered $78,000,000 barrels of gasoline, or 80 per cent of its total gasoline production to other states.

He further stated that the following statements are taken from the report on Pipe Lines, House Report No. 2192, made by the Committee on Interstate and Foreign Commerce to the House of Representatives; that there has been a great waste of natural resources in the United States through competition to "skim the cream"; that the oil industry is particularly vulnerable to such waste; that oil lying under the properties of competing operators is fugitive and leads to a race between owners to take as much oil from their own and adjacent holdings as is possible; that this situation leads to unseemly haste in drilling and operation; that as a result, numerous wastes occur through the escape into the air of oil and natural gas and the production of oil in excess of market demand; that overproduction leads to unnaturally low prices and the waste which always accompanies the utilization of commodities sold at

an unnaturally low price; and that unrestricted competition [fol. 126] in the East Texas Field illustrates this waste; that during 1931 Texas showed an increase of production of 36,217,000 barrels, so that production in Texas rose from 48 per cent of the production of all other states in 1930 to 63 per cent in 1931; that this overproduction led to a fall in the price of oil to a low level of 13c a barrel, or lower; and that from the standpoint of conservation this waste is a matter of great concern.

The defendants introduced in evidence a statement by E. J. SULLIVAN, who stated that he had been engaged in the production and marketing of crude oil for the last 18 years in Wyoming and also in Montana; that he is familiar with the production, refining, transportation and marketing of crude oil in both of these states; that a large portion of the oil produced in said states prior to 1931 had a market in Canada, approximately 30 per cent of the entire production of Montana and approximately 10 per cent of the oil produced in Wyoming being shipped to Canada; that this market has been established over a period of years and it is customary and normal commerce in crude oil; and that during the flush production from East Texas in 1931, East Texas oil was reduced in price to as low as 15¢ a barrel and took from Montana and Wyoming their entire Canadian market for crude. He further stated that when the production of crude oil in East Texas was controlled, Wyoming and Montana gradually regained their Canadian market, but that early in 1933 when East Texas oil dropped to a price of 10¢ to 25¢ a barrel, it again took away the Canadian market from Montana and Wyoming. He further stated that the reason that the oil from these states cannot [fol. 127] compete with the flush production from East Texas is because the crude in Wyoming and Montana is produced from wells of settled production at a lifting cost of approximately 40¢ per barrel. He further stated that at the present time, due to the control of production in East Texas, the Canadian market is more approximately in a normal condition.

The defendants introduced in evidence a statement by CHAS. F. ROESER, who stated that he has been engaged in

the oil business for 28 years, particularly in the production of oil as an individual producer in Ohio, Oklahoma, Kansas and Texas and that he is thoroughly familiar with the oil busines- in all its branches. He further stated that the production of oil is seldom responsive to market conditions existing at the time of production, due to the fugitive nature of oil and the fact that each owner of property over a common oil pool must drill and produce at the same rate as its competitors in order to obtain his share of the oil; that this condition has led to competitive production in every oil field where conservation laws have not existed or have not been enforced; and that production in excess of market demand leads to ruinous price reductions, demoralizing the industry as a whole and restricting the normal flow of oil and its products in interstate commerce.

He further stated that the development of the East Texas oil field illustrates this condition; that its disorderly development led to a decline in the price of oil from $1.00 a barrel in January, 1931, to 13¢ in August, 1931; that this reduction in price affected the whole country so that Oklahoma oil declined from $1.25 to as low as 25¢ a barrel; that the ruinous reduction in price compelled the shutting in or [fol. 128] abandonment of many wells of small production, the closing down of refineries and a widespread interference with and obstruction of the normal flow of oil. He further stated that the effect of overproduction in East Texas is illustrated by the result on the fields of North Texas and West Central Texas; that the fields of North Texas include 15,000 producing wells of settled production; that these wells produced during the period from 1920 to 1930 an average of about 90,000 barrels per day or about six barrels per well per day; that the cost of lifting the oil to the surface was approximately 40¢ per barrel; that the East Texas production caused the price of oil in North Texas to drop to 22¢ a barrel or lower; that as a result of the low price prevailing during the greater part of the period from 1931 to July, 1933, 1,000 wells were abandoned and the production therefrom, which amounted to 7,000 or 8,000 barrels per day, was entirely lost; that the reserve production from these wells would amount to 4,000,000 barrels of crude oil, which has thus been lost forever; that a large percentage of the production from the North Texas area is transported out of the State of Texas to refineries in other States and

that the abandonment of wells there therefore directly affected and prejudiced the normal flow of oil in interstate commerce.

He further stated that refineries located in Wichita County, Texas, refined during the period from 1920 to 1930 an average of 38,000 barrels per day; that during the period of large production from East Texas, the runs of crude oil on these refineries dropped more than one-half, or to an average of approximately 19,000 barrels per day; that 3 refineries in Wichita County were shut down entirely; that the production from these refineries regularly moved to consuming centers outside of the State of Texas and that the loss of output from these refineries necessarily [fol. 129] reduced the amount of refined products moving out of the area into interstate commerce. He further stated that he is the owner of one-half interest in 321 wells in North Texas and West Central Texas; that these wells were shut down at the time of the flush production from East Texas; and that the product of these wells, which generally moved to points outside of the State, (was taken from the channels of interstate commerce. He further stated that if any one of a number of large fields in the United States were allowed to produce without restraint, it would absorb the market of the fields of settled production and "stripper" wells, of which there are approximately 300,000 in the United States, producing more than 50 per cent of the total supply that such shut-down would not only disrupt the normal flow of interstate commerce, but would in some cases cause the loss of great reserves of crude oil and that the closing down of such wells would throw out of employment thousands of employees, without materially giving further employment in the fields of flush production, and that the employees of many refineries which use oil produced from "stripper" wells would be thrown out of employment.

The defendants introduced in evidence a statement by E. B. Reeser, who stated that he is the President of the Barnsdall Refineries, Inc.; that he has been an officer or employee of such corporation for at least ten years; that he has become thoroughly familiar with the business of the corporation; that said corporation is the owner of re-

fineries in Oklahoma and Kansas, where it is engaged in the business of refining crude oil; that the average number of [fol. 130] barrels of oil refined by said corporation per year is about 4,000,000 and the average number of gallons of gasoline produced is 80,000,000; that one of the important elements in the cost to the refiner manufacturing gasoline is the cost of crude oil; that during the last few years regulation of production of oil has been authorized in the State of Texas and the Texas Railroad Commission has issued orders limiting the amount of oil to be produced; that there have been frequent violations of the orders of the Railroad Commission; that oil produced over the amount allowed by said Commission is known as "hot" oil; that "hot" oil is generally purchased, not by legitimate refiners, but by refiners who know that the same has been produced in violation of law and who purchase it at a lower price than the established price for crude oil; that at various periods during the last three years a large amount of "hot" oil has been produced in the East Texas field; that such "hot" oil has generally been produced secretly and secretly delivered to refiners in the same general locality; that "hot" oil has usually sold at 40¢ a barrel or less, while the posted price of legally produced oil has been $1.00 per barrel; that refiners producing gasoline from "hot" oil sell their products to wholesalers at a lower price than those using legitimate oil; that wholesalers sell such products at a less price to retailers in the various states and that the retailers sell such products to the public at a less price than their competitors dealing in gasoline products from legitimate oil; that their competitors are thereupon compelled to cut prices in order to retain their business; that waves of price cutting frequently extending over entire states and sometimes across state boundaries have resulted and that the price of crude oil and its products throughout the country has, accordingly, been affected by the production of "hot" oil and the sale of its products.

[fol. 131] He further stated that the refinery of which he is the President, has been injuriously affected during the past years by the sale of cheap gasoline produced from "hot" oil and in its St. Louis market has been forced to sell its products at a price below the cost of production in order to retain its customers.

The defendants introduced in evidence the statement of R. H. MONTGOMERY, who stated that he is a Professor of Economics in the University of Texas; that he has made a field study for many years of Government regulation of industry with particular reference to railroads and public utilities and that he has acquired a rather detailed knowledge of the conflicts arising between Federal and State governments in regulation of industries which in their essential operations cut across state lines.

He further states facts concerning the size and importance of the petroleum industry, the geographical distribution of production and consumption in the United States, the interstate movement of oil, and the products thereof, produced in Texas, the interrelated nature of the industry, the necessity of national control, the waste that has resulted from overproduction and its effect upon the non-integrated companies the impossibility of the individual states curing the existing evils and the probable beneficial effects of the Petroleum Code, which facts substantially agree with those set forth in the statement of W. B. Hamilton set forth above.

The defendants introduced in evidence a statement by H. C. WIESS, who stated that he is Vice President of the [fol. 132] Humble Oil & Refining Company; that he has been actively engaged in the oil business for approximately 22 years; that he has been a member of the Board of Directors of the Humble Oil & Refining Company for more than sixteen years and a Vice President for more than fourteen years in direct charge of refining and marketing operations; that Humble Oil & Refining Company is an integrated company, engaged itself or through its subsidiary, Humble Pipe Line Company, in producing, transporting, refining and marketing; that said corporation produces oil in New Mexico, Louisiana and in almost all of the producing areas in Texas; that it purchases oil in various producing areas in Texas; that the Humble Pipe Line Company transports oil from all of the principal producing areas of Texas and New Mexico, moving approximately 276,000 barrels per day, of which 197,000 barrels move in interstate or foreign commerce; that Humble Oil & Refining Company has a capacity of approximately 122,000 barrels per day, at least

95 per cent of the products from which are marketed in other states or in foreign countries and less than 5 per cent of which are marketed in Texas; that he is familiar with the various oil fields in Texas and the methods of production, transportation, refining and marketing of the petroleum thereof; that he has made a careful study of the movement of oil and its products to the markets in the United States and abroad; that his corporation has maintained a statistical force for the accumulation and analysis of facts involving the production, transportation, refining and marketing of oil, a large part of which has been done under his supervision and the results of which have been at all times available to him and in constant use by him; that he has made a careful study of not only such data but of statistical data and reports issued by the United States Bureau of Mines, the American Petroleum Institute [fol. 133] and other local, state and national trade associations; and that he is Chairman of the Refining Sub-Committee of the Planning and Coordination Committee for Region 4, including the states of Kansas, Oklahoma, Texas, and New Mexico, and in such capacity is in close touch with refining conditions and practices in such region and the relation between such conditions and the practices of producing and transporting.

He further stated facts concerning the size and importance of the petroleum industry, the position of the integrated companies in the industry, the geographical distribution of production and consumption of petroleum in the United States, the interstate movement of petroleum produced in Texas, the intermingled nature of interstate and intrastate commerce in petroleum; the effect of overproduction upon the natural market, the effect upon production of the fact that petroleum is produced from common reservoirs, the demoralizing effect of the marketing of "hot" oil, and the need for a determination of consumer demand by a national body, which facts substantially agree with those set forth in the statement of W. B. Hamilton set forth above.

The defendants introduced in evidence the statement of RALPH H. KINSLOE, who stated that he is Vice President and General Manager of Magnolia Petroleum Company

and its subsidiary, Magnolia Pipe Line Company, and has general supervision of the production and sale of its crude oil and the products thereof; that he has been actively engaged in the oil business for 20 years; that he has actual knowledge of the production, refining, transportation and [fol. 134] marketing of crude oil in all of the states in which the Magnolia Petroleum Company and its subsidiary operate; that he has observed and studied petroleum business from a national viewpoint; that he knows the effect from a national standpoint of overproduction and underproduction of crude oil upon the national price structure; that the Magnolia Petroleum Company and its predecessor, a joint stock association, have been actively engaged in the production, refining and sale of crude oil and its products at wholesale and retail in interstate and intrastate commerce since 1911; that said Company is a purchaser of crude oil from other producers in Oklahoma, Louisiana, Arkansas and Texas; that said Company owns and operates 5 refineries in the State of Texas; that said Company does not own or operate refineries in other states; that its subsidiary, the Magnolia Pipe Line Company, is a common carrier of crude oil, operating its system of pipe lines in Louisiana, Oklahoma, Arkansas and Texas; that the main trunk line from all states of said Company terminates at Beaumont and Magpetco in Jefferson County, Texas, on the seaboard and that said Pipe Line Company does not purchase or sell oil.

He further stated that oil is produced from two classes of wells, known as flowing wells and pumping wells; that the Magnolia Petroleum Company owns and operates 6,057 wells situated in 5 states, of which number 5,521 are pumping wells and 536 are flowing wells; that of the flowing wells 516 are located in Texas and 467 in the East Texas field; that, of the total wells operated, 83.7 percent are pumpers and that exclusive of the East Texas flowing wells, 98.2 per cent are pumpers and that the percentage of pumping wells operated by said Company in Oklahoma, Kansas, Arkansas and Louisiana is 99.3.

He further stated that on January 1, 1933, Government [fol. 135] statistics show that there were 321,500 oil wells in the United States, of which approximately 11,000 were flowing wells in the East Texas field and 600 were pumping wells in said field; that it is estimated that there are 15,-

000 flowing wells in the United States representing 4.7 per cent of the total number of producing wells; that the average production of the pumping wells is from one to five barrels of oil per day; that unless the said pumping wells are continually operated, they are ruined; that flush fields and flowing wells are comparatively short lived and as the gas and other natural pressure diminishes, the wells cease to flow and the recovery of oil therefrom is by the pumping process; that the nation is dependent upon pumping wells to secure steady and dependable production; that the national requirement of crude oil is from 2,000,000 to 2,300,000 barrels per day; that it is estimated, and he believes correctly, that under normal conditions 75% of the nation's requirement of crude oil is secured from pumping wells; that the potential production from the 11,000 flowing wells in East Texas is in the neighborhood of 5 million barrels per day, far in excess of the national requirement; that if these wells were permitted to produce one-half of their potentials, they would produce 2,500,000 barrels, which is in excess of the nation's requirement; that the Magnolia Petroleum Company, through pumping wells in Oklahoma and Louisiana, secures the greater percentage of the oil that it produces and purchases in those states; that only a small percentage of the oil purchased and produced by it in said states is from flowing wells; that in the States of Kansas and Arkansas, it produces a large number of barrels of oil per day, solely from pumping wells; that practically all of the oil produced and purchased by the Magnolia Petroleum Company in said four states is shipped and sold in interstate commerce; that [fol. 136] 22% of the oil produced and purchased by said Company in Texas is sold and shipped in interstate commerce; that thousands of barrels of oil produced in states other than Texas are transmitted in interstate commerce through its subsidiary pipe line to Beaumont and Magpetco and there shipped to the Eastern Seaboard by boat; that said oil is produced and purchased for the purpose of said interstate shipments; that the majority of the oil so shipped is produced from pumping wells; that a small percentage of the crude oil purchased and produced in states other than Texas is refined in Texas; that 78% of the oil produced and purchased in Texas is refined in Texas; that during the process of refining said oil, it becomes mixed

and intermingled and it is impossible to determine from what crude oils the manufactured products are derived; that 81% of the manufactured products is sold in interstate commerce to purchasers on the Eastern Seaboard of the United States and in other states of the Union, and that said products are manufactured for the purpose of being sold in interstate commerce.

He further stated that the market value of crude oil is determined from a national viewpoint, but its determination is to a great extent controlled by local conditions; that where there is an excess of petroleum over national requirement, its market value decreases as was demonstrated when the oil field in East Texas was permitted to produce without restriction, resulting in the lowering of the price of crude oil to from 25¢ to 10¢ a barrel in Texas, and a great reduction in the price of crude oil in all of the other oil producing states; that when the price of crude oil is reduced to the point where it is unprofitable to operate pumping wells, said pumping wells will be shut in; that the shutting in of said wells results in said wells being destroyed by the "sanding up" of the same and the sands [fol. 137] becoming impregnated with salt water; that a further result is that laborers and employees upon said wells are without employment and the owners of said wells lose their investments, and that it further results in taking out of interstate commerce the oil which has been usually produced from said wells.

He further stated that until the Federal Government undertook to control the petroleum industry from a national viewpoint, the production of oil far exceeded the national demand; that even now, owing to evasion of the law, production is in excess of national demand; that the states in general are incapable of controlling the production of oil; that in East Texas on account of the numerous flowing wells there is great overproduction; that excess oil is being sold far below the market value of the same to refiners who have built temporary refineries in the East Texas field; that it is common knowledge that this "hot" oil is produced in such quantities in East Texas and is sold below the market and true value of the same to such an extent that, unless prohibited, it will depress and destroy the national market for crude oil.

He further stated that one class of refiners undertakes to observe and comply with the Rules and Regulations of

the Government bodies, while another flagrantly violates these rules; that this second class sells the gasoline so manufactured at a much lower cost than the legitimate refiner; that said refiners evade taxes imposed by the State of Texas and sell gasoline to irresponsible persons who operate truck equipment by which they peddle said bootleg gasoline at retail and wholesale; that these peddlers haul such gasoline both in the state where it is manufactured and into adjoining states and often sell this gasoline to retailers who are handling the products of legitimate refiners [fol. 138] and who mix and mingle said products with the legitimate gasoline and sell this mixed gasoline under the trade name and mark of legitimate refiners; that this practice is responsible for a large illicit industry in Texas resulting in the manufacture of millions of gallons of poorly refined gasoline which has affected the marketing of gasoline in interstate commerce; that the result is that the legitimate price structure and market value of gasoline and crude oil has been affected in that the legitimate refinery, wholesaler and retailer is driven to the necessity of meeting the price fixed by the illegitimate seller and marketer, even though this necessitates selling below cost; that, if this continues, it will result in the depression of the entire market structure and will further result in the rapid depletion of the nation's oil reserves and a waste of petroleum and its manufactured products; and that these sources of "hot" oil can be checked by a series of reports, under oath, by producers and refiners and such is a certain useful, practicable and reasonable method of locating the origin of "hot" oil and its products which move in interstate commerce.

He further stated that he is familiar with the various provisions of the National Industrial Recovery Act and the Petroleum Code and the Rules and Regulations adopted by the Administration under said Act; that he believes the enforcement of said Act and the Rules and Regulations will go a long way in eliminating the illegal and harmful practices being carried on and will conserve the resources of the nation and permit the free flow of petroleum in interstate commerce; that unless production of oil is controlled, the free flow of petroleum in interstate commerce will be prevented, unemployment will result and employees in the production and sale of petroleum will be reduced and [fol. 139] their wages diminished; and that this is demon-

strated by the actual results which have occurred during the last 2 or 3 years from the production of "hot" oil.

The defendants introduced in evidence a statement by CARL WEINER, who stated that he is and has been a producer of crude oil in the Chanute field for 20 years; that he is President of the Kansas Stripper Oil Well Association, the membership of which is composed of operators of oil wells in the oldest fields of the eastern counties of Kansas; that in the eastern counties of Kansas there are approximately 11,000 oil wells having a daily production of about 6,000 barrels; that many of these wells are more than 30 years old; that these wells have frequently been restricted because of uncontrolled overproduction of oil in other areas, particularly since the opening of the East Texas area and the Oklahoma City pool; and that since production has been controlled through the Oil Code, these wells have been continuously operated, except for 12 days during the month of October, 1933.

He further stated that in May, 1933, the market price of 36 gravity oil was 25¢ per barrel, and that, as a result, many of the wells in Eastern Kansas were abandoned or shut down; that to his knowledge, the number of wells so abandoned was 476; that there are probably as many more of which he has no positive knowledge; that the production from such wells averaged 600 barrels per day; that this production during the period of their operation was largely transported in interstate commerce; that since the Oil Code has been in effect, the price level has reached $1.00 per barrel; that this increased price has made it possible [fol. 140] for the employees on the wells to be paid good wages; that many men have been employed in reconditioning the wells and the lease equipment; that the general business conditions have greatly improved in the locality where the wells are located and that when the price of oil was reduced to the low levels above mentioned, many men employed on the pumping wells were thrown out of work and those who were retained were paid very low wages.

The defendants introduced in evidence a statement by E. B. REESER, who stated that he has been engaged in vari-

ous branches of the Oil Industry for 32 years; that for 15 years he has been an official of the Barnsdall Petroleum Company, a corporation engaged in the business of producing, refining, transporting and marketing petroleum, and its products, and that he is particularly familiar with the production and marketing of crude oil and the refining and marketing of the refined products thereof.

He further stated that for the last 32 years, from time to time, new oil fields of large production have been discovered and until the last few years the production from such fields has been practically unrestrained, that the invariable result of bringing in fields of large flush production has been that in a short time thereafter the price of crude oil has been materially reduced with an unfavorable reaction upon the market and sale not only of the crude oil, but also of the refined products thereof; that specific examples are the Spindle Top Field in Southeastern Texas in 1902, the Glen Pool Field in Oklahoma in 1906, the Lakeview Gusher Field in California in 1910, the Cushing and Healdton [fol. 141] Field in Oklahoma in 1913-14, the Mexia and Powell Field of Texas in 1922, the Seminole Field in Oklahoma in 1927, and the East Texas Field in Texas in 1930; that in many instances the reduction in price amounted to 80 and 90% of the sale price of crude petroleum; that in many instances the excess production has caused the shutting down of thousands of wells of small and less profitable production which has resulted in the permanent abandonment of these wells and the consequent loss of known reserves of petroleum in the United States; that the Eastern Seaboard market for the oil produced in California was absorbed by the production of the East Texas Field because of the low production cost and the great supply from the East Texas Field; that the result of the loss of this market caused the closing down of many of the smaller wells in the California field, increasing unemployment in said field; and that it is well known that in a great many instances the closing down of wells of small production for any length of time permits water to encroach upon the oil producing formation and thus destroys the producing area in such fields.

He further stated that there are a number of fields in the United States, the unrestrained production of which would cause a reduction in the market price of oil to a few

cents a barrel; that the East Texas field alone could supply the entire requirement of oil for the entire United States and absorb the entire market for oil now produced in the stripper oil area of Pennsylvania, Ohio, Illinois, West Virginia, Kentucky and even of the pumping areas of Oklahoma, Texas and Kansas; that such an absorption of the market would not only result in disruption of the normal flow of interstate commerce, but would result in a great increase in unemployment since the East Texas field can produce the amount of oil necessary to supply the entire [fol. 142] United States with very little increase in its number of employees; and that many refineries scattered throughout the United States which work almost exclusively upon oil produced from stripper well fields would cease to operate and throw out of employment their employees.

The defendants introduced in evidence a statement by W. W. WARNER, who stated that he is the President of the Oklahoma Stripper Well Association, the membership of which is made up of Stripper Well Associations for the several districts embracing the entire oil producing area of Oklahoma; that approximately 90% of all producing wells in Oklahoma produce less than 10 barrels per day and are stripper wells; that it is estimated that there are approximately 50,000 of such wells and that the total aggregate production from them amounts to 140,000 barrels per day; that these wells are largely owned by men of small means who dispose of their oil to integrated companies; that the average cost of producing oil in stripper wells throughout Oklahoma varies from 75¢ to $1.00 per barrel; that the cost of producing oil from flush pools like the Oklahoma City pool or the East Texas field is much less; that the unrestrained production of the Oklahoma City pool and East Texas field has in the past resulted in overproduction with the result that the price of oil in Oklahoma for a considerable period of time reached a low level of 18¢ per barrel; that this price was below the actual cost of production in Oklahoma; that it is estimated that 5,000 stripper wells were compelled to shut down or were completely abandoned with a loss in production of approximately 4,000 barrels per day; that the production thus lost ordinarily had been transported in interstate commerce to

[fol. 143] refineries outside of the State and the refined products transported to consuming centers throughout the country; that many of the stripper wells were closed and were completely lost, as the oil lying beneath them can probably never be recovered; that many employees were thrown out of work through the closing of these wells and the wages of those retained were drastically reduced; and that since production has been placed under control by the National Recovery Act and the Oil Code, the price has increased to a present level of $1.00 per barrel and new employees have been put back on the pay roll at good wages.

He further stated that it is impossible for stripper wells to compete with flush production wells because of the disparity in the cost of production; that if flush production wells are allowed to flow unrestrained, they will virtually monopolize the market so that all of the stripper wells will eventually be shut down or abandoned; and that, in his opinion, stripper wells supply somewhat over 25% of the total domestic production.

The defendants introduced in evidence a statement by J. Wood Glass, who stated that he is President of the Northeastern Oklahoma Stripper Wells Association, which Association includes in its membership oil operators owning and operating stripper wells in Washington, Nowata, Rogers, Osage and North Tulsa Counties, Oklahoma; that there are approximately 20,000 oil producing wells within this area which produce approximately ¾ths of a barrel of oil per day; that the average cost of lifting the oil in these wells is $.84 per barrel; that these stripper wells cannot compete with flush production wells if the latter are permitted to flow unrestrained; that [fol. 144] the unrestrained flow from the East Texas field and the Oklahoma City pool reduced the price of oil in the Oklahoma area to $.25 per barrel in 1933, causing the shutting in or abandonment of approximately 2,000 stripper wells in Northeastern Oklahoma; that the oil from these wells was taken out of the interstate channels of trade into which it customarily flowed; that the shut-down of these wells threw out of employment many workers and caused drastic reduction in wages; and that since the adoption of

the National Recovery Act and the Oil Code the price of oil in Northeastern Oklahoma has increased to $.94 per barrel with the result that stripper wells are able to produce at some profit and many men have been returned to employment and wages have been substantially increased.

The defendants introduced in evidence a statement by J. R. PEMBERTON, who stated that he is a graduate of Leland Stanford University with an A. B. degree; that he majored in geology with particular reference to petroleum matters; that during the year 1909 he was employed as a field geologist by the United States Geological Survey; that in 1910 he instructed at Stanford University; that in 1911-15 he examined the oil and gas resources in the Argentine as a geologist in the employ of the Republic of Argentine; that during 1916-1917 he was employed in the Petroleum Industry in California; that from 1918 to 1923 he was engaged in geological exploration, leasing land, developing wells, producing oil and gas and marketing oil, gas and gasoline in Oklahoma, Texas, Kansas, New Mexico, Louisiana, Arkansas and Kentucky; that during 1924 to 1931, he was engaged in California in the production and marketing [fol. 145] of petroleum; that since 1932 he has been Oil Umpire for California and since September 8, 1933, he has been Oil Umpire for the Federal agency designated by the Petroleum Administrator for the allocation of production of oil in California.

He further stated that within 10 days, the State of California can produce in excess of one million barrels of crude oil daily and maintain such production for at least 10 years: that the potential capacity of the known fields in California is sufficient to produce an amount sufficient to supply the entire demand in the United States for many years to come; that the potential capacity of California to produce petroleum from undiscovered pools is unknown, but of great extent; that the Kettleman Hills Field alone is estimated to contain 2 billion barrels of recoverable petroleum; that the Los Angeles Basin and coastal fields could likewise supply a very large proportion of the consumptive demand of the United States; and that he has received many complaints from producers in California that the December allowable of 450,000 barrels is extremely

low when compared with the potential capacity of the California fields.

The defendants introduced in evidence a statement of AVARY H. ALCORN, who stated that he is an employee of the Department of the Interior, Division of Investigations; that he has gathered data on the production of petroleum in the East Texas field during the month of October, 1933; that the data was obtained from the various pipe lines, gathering systems, refineries, reclamation and gasoline plants located and operating in the East Texas Oil Field; that all information not obtained from the above mentioned [fol. 146] companies operating in the East Texas Field was obtained from the Railroad Commission of Texas and from monthly and daily reports of the above described companies, received in the Department of the Interior office at Tyler; that the amount of overproduction shown by this data is 591,576 barrels, which amount was arrived at after checking every available and possible report that had to do with the producing, refining and transporting of crude oil in and from the East Texas field. He further stated that after twelve years' experience in the oil business he was positive that the above mentioned overproduction of 591,577 barrels of crude oil could not have been, or would not be consumed within the bounds of the State of Texas and that it would have to enter the stream of interstate commerce and be marketed over a large trade area.

The defendants introduced in evidence a statement of WALTER S. BEHRENS, who stated that acting in the scope of his official duties as an Oil Enforcement Agent of the Department of the Interior, Division of Investigations, he has assembled data showing the movement of tank cars of gasoline from the East Texas Oil Field to various points in the United States and also gasoline consigned interstate to the Gulf Coast where such shipments were loaded on tankers entering coastwise and foreign commerce; that from his knowledge of the industry he knows that oil produced in violation of State law is sold at distress prices and has time and time again demoralized the national market for petroleum and its products; that this demoralization

has deprived legitimate oil producers, land owners and markets both within the State of Texas and elsewhere of their fair share of the national market, because of the [fol. 147] competitive advantages the violators enjoy and has deprived legitimate operators of fair prices for their crude oil: that he bases the foregoing statements on the fact that in March, 1933, there was received at Texas City Terminal, Texas City, 4301 cars; in April, 2796 cars; in May, 2796 cars; in June, 678 cars, and from July 1st to July 20th, 1754 cars, each car containing approximately 220 barrels of oil; and that the refined products of this petroleum entered interstate and foreign commerce, affecting the gasoline market not only of Texas, but of the nation.

He further stated that the East Texas Oil & Refining Company shipped from the East Texas Field from June 8th to September 28th, 1933, 342,773.87 barrels of gasoline to Harbur Terminal Company at Texas City for interstate coastwise shipment, of which 197,144.76 barrels had been so shipped on September 28th; and that this refinery and others in the East Texas Oil Field have billed an enormous amount of gasoline to East St. Louis and other points in Illinois, to the States of Arkansas, Tennessee and Kentucky, and to other wide areas, thus affecting the national price structure.

The defendants introduced in evidence a statement by Jos. L. QUINN, who stated that in the course of his employment as Oil Enforcement Agent by the Department of the Interior, he checked the records in the office of the Railroad Commission of Texas at Kilgore, Texas, and found that the total shipments during the month of November amounted to 6,906 tank car loads; that of this amount 3,303 cars moved for export or coastwise, 2233 cars moved interstate and 1370 cars moved intrastate; that the percentage of [fol. 148] cars moving intrastate on the total car movements was 19.8% and that this proves that 80.2% of the tank car shipments of products refined in the East Texas Field by East Texas refiners moves interstate.

The defendants introduced in evidence a statement of MARVIN E. CROOM, who stated that he is the East Texas

Manager for the Texas Petroleum Council, an impartial, non-political and non-factional association of companies and individuals engaged in the oil business, which has for its principal purpose the assembling, co-ordinating and disseminating of information appertaining to the conduct of such oil business, with particular reference to the enforcement of the Regulations, Rules and Statutes of Proration, whether State, Federal or individual; that under his direction the records of the various oil regulatory departments of the State have been carefully checked in order to ascertain the true facts with reference to the movements of crude oil and its products in intrastate markets as compared with interstate and foreign markets; that for the month of October, 1933, the total consumption of crude oil and the products thereof within Texas was represented by 78,207,575 gallons of motor fuel, as shown by sworn statements of refiners and distributors filed with the Comptroller of Public Accounts; that from these said sworn statements it appears that the total crude oil runs to stills in October, 1933, amounted to 17,862,236 barrels, while the motor fuel manufactured from this oil amounted to 339,232,853 gallons, an average yield of 45.2% per barrel; that the tank cars and other shipments of motor fuel out of the State of Texas for the month of October, 1933. amounted to 295,372,270 gallons, which is 79.065% of the total used in intrastate and inter- [fol. 149] state markets; that the crude oil shipped out of the State of Texas in the month of October amounted to 6,656,445 barrels, as shown by sworn statements rendered to the Comptroller of Public Accounts; that the intrastate consumption of crude oil and the products thereof amounted to only 4,121,648 barrels in October, 1933, as compared to interstate shipments of 22,215,456 barrels for the same month, or 15.65% intrastate and 84.35% interstate; that the gasoline stocks held by those refineries and distributors reporting to the Comptroller amounted to 294,064,593 gallons at the end of October, 1933, which is practically equal to the total intrastate and interstate market demand for one month of the Winter period; that the crude oil stocks held in Texas at the end of October, 1933, total some 126,872,000 barrels, which is equivalent to the entire State's production for 4.6 months under the current State allowable of 888,000 barrels per day; and that such stocks of crude oil and motor fuel may at any time move

into interstate and export market- to constitute a decided menace to such markets, unless the movement of the same and the origin of said movement be supervised and controlled.

He further stated that at the present time the exact movements of crude oil and its products within the State of Texas are not adequately controlled by State agencies; that the Railroad Commission has supervision over the production of crude oil and pipe line movements, while the Comptroller of Public Accounts has supervision over all phases of intrastate business for tax purposes only and that there is no "tie-in" between the two departments; that there are some sixteen gathering systems which do not report to the Railroad Commission and that these sixteen gathering systems did not report to the Comptroller for the month of October, 1933, so that there are not any State records showing accurate amounts of crude oil transported [fol. 150] by these lines; that the State authorities do not have the legal right to restrain the movements of certain kinds of oil produced or assembled in excess of the current allowable, such as pick-up pits, salvage plants and all classes of storage; that there are eleven refineries located within or adjacent to the East Texas Field which have not been reporting to any regulatory body having jurisdiction and control over oil sources; that according to the estimated runs on stills by agents of the Railroad Commission, these eleven refineries ran for the week ending November 18, 1933, 29.4% of all the runs on stills by refineries located in the East Texas Field, while for the month of September, the same eleven plants ran only 13.5%, showing the increasing market influence of such uncontrolled operations; that for the month of September, 1933, reports to the Comptroller covering taxes were available for only 5 of these 11 plants, but that from their own sworn statements, these five refineries delivered into interstate and export markets more than 54% of their total reported sales for September; that the present laws of the State of Texas are such that a refiner or distributor doing purely an interstate business does not have to have a permit from State authorities and does not have to render reports except special audits, which cannot be conducted extensively and frequently enough to provide adequate checks; that illegal gasoline on which taxes have not been paid, or which is manufactured from "hot" oil, has in the past con-

stituted a menace to and burden on interstate markets; that any uncontrolled oil operations within Texas still constitute a menace to the interstate markets of crude petroleum and its products, because of the tremendous potential production held within the State; that the effect of motor fuel refineries in Texas upon interstate markets may be illustrated by the following list of interstate destinations of gasoline shipments from Oil Refineries, Inc., [fol. 151] located at Overton, Texas, for the month of August, 1933, South Carolina, Ohio, Michigan, Wisconsin, Mississippi, Arkansas, Illinois, Indiana, Nebraska, Iowa, Georgia and Kentucky.

He further stated that current authorized crude petroleum production from the East Texas Field has been cut from an average of 59 barrels as of September 7, 1933 to less than 35 barrels as of December 10, 1933; that unless crude movements are adequately controlled within the State, "hot" oil may become so important a factor in the markets that production will suffer to the extent that general current operations cannot be conducted at a profit; that because of the very nature of petroleum and its products, "hot" oil and its products become intermingled with the allowable production and the identity of the same is not and cannot be distinguished when it crosses the State line; and that the foregoing facts and statements are based upon careful and detailed studies of existing conditions and are substantiated by certificates confirming the important facts contained herein.

The defendants then introduced in evidence a statement by R. B. McLaughlin, who stated that he is Secretary and Assistant Treasurer of the Texas Pipe Line Company and an officer of the Texas Pipe Line Company of Oklahoma; that he has been in the employ of said companies for twenty-seven years; that his duties have been practically exclusively confined to pipe line operation during that time; and that it has been necessary to make an extensive study of pipe line operations not only of the companies by which he has been employed, but also by other major com- [fol. 152] panies operating in what is termed the Mid-Continent and Gulf Coast areas.

He further stated that pipe lines constitute a unique specialized transportation system developed by the petro-

leum industry in many respects similar to railroad systems with trunk line stations, terminals, storage yards, switch systems, dispatchers, and telephone and telegraph systems; that interstate pipe lines operate as common carriers and are subject to the Interstate Commerce Act; and that in various states trunk lines are common carriers and subject to the jurisdiction of State Commissions. He further stated that the Texas pipe Line Company operates today in New Mexico, Texas, Louisiana and Arkansas, with a network of 5,121 miles and performs both interstate and intrastate service; that the Texas pipe Line Company of Oklahoma, while its system is confined within the State of Oklahoma, accepts oil for transportation under joint tariff with the Texas Pipe Line Company for delivery to Houston and Port Arthur, Texas, and also accepts crude for delivery to the Texas-Empire Pipe Line Company, which is an exclusive interstate transportation system.

He further stated that on the basis of a report published by the Interstate Commerce Commission, No. 3397, issue of July, 1933, there were on December 31, 1932, 92,783 miles of pipe line in operation, representing an investment of $763,941,699.00, which transported 1,095,912,816 barrels of oil; that on the basis of reports rendered by Walter M. W. Splawn to the Interstate Commerce Commission (House Report No. 2192—Jan. 19, 1932), approximately 53% of the oil transported in 1931 moved in interstate commerce; that the above report of the Interstate Commerce Commission does not include reports from pipe line carriers operating in California and investigation will develop that [fol. 153] considerable quantity of oil transported by the California pipe line carriers was for interstate commerce in that the oil was delivered to boats at the Pacific Coast for delivery to the Atlantic coast; that, according to the Splawn report, of the 73 major pipe line companies, 21 are engaged exclusively in interstate commerce; that to his knowledge the operations of those engaged in both interstate and intrastate transportations in the Mid-Continent and Gulf areas is so intermingled that it is impossible to separate the operations because in many operations the same pipe lines and pumping equipment are used for transporting oil moving in interstate and intrastate commerce; and that frequently oil originating in a given pool and moving to a given destination through the same pipe line system will be moving in both interstate and intra-

state commerce, since part will be delivered locally at the destination and part will be delivered into boats moving in interstate and foreign commerce.

The defendants introduced in evidence a statement by E. H. EDDLEMAN, who stated that from 1922 to 1926 he was Vice President of the Texhoma Oil & Refining Company; that from 1926 to 1928 he was Vice President of the Continental Oil Company, both of which companies were engaged in the production, refining, transportation and marketing of crude oil and its products; that from 1928 until December, 1931, he was Receiver or Manager of American Refining Company, a corporation engaged in the same branches of the industry; that from January, 1932, until October, 1933, he was Executive Vice President of the Texas Oil and Gas Conservation Association, an association engaged in securing data and statistics concerning all [fol. 154] branches of the oil industry; and that he is familiar with the production, refining and marketing of petroleum and its products throughout the greater part of the United States.

He further stated that approximately 50% of all crude oil produced in the United States is produced by integrated companies whose activities encompass the whole industry; that the typical and usual course of business in the oil industry from the place of production to final distribution is as follows: If the oil is produced by an integrated company, it is transported by the company's pipe lines to its own refineries, sometimes located in another state, then placed in temporary storage until refined in the company's own refinery and moved to the distributing stations of the company, where it is sold either to wholesalers or to the final consumers; that from the moment the oil reaches the surface of the well until it reaches the company's bulk plants or places of ultimate consumption, it is in a continuous current of interstate commerce; that on the average about 80% of all oil produced finds its ultimate market in other states than that in which it is produced; that in the case of production by an integrated company, the title to the oil does not change from the time it leaves the ground until sold to the jobber, distributor, retailer, or consumer; that oil in trunk pipe lines is commingled with other oil so

that there is as a rule no identity of shipment; in the case of production of oil by individuals or non-integrated companies, the oil is usually produced under a contract of sale to some integrated company prior to the time of production; the non-integrated company usually has no storage or pipe line facilities; the oil after purchase by the integrated company is treated in the same way as oil produced by them; in some cases the oil is neither produced by or sold [fol. 155] to an integrated company but sold to a refinery located near the source of production; such refinery, however, sells only a part of its refined products within the state where produced and refined, and the balance finds its way into interstate commerce; that thus the typical and customary course of the oil business is for the great bulk of all oil and the products thereof to move in a continuous stream of interstate commerce, whether produced by integrated or non-integrated companies or individuals.

He further stated that about 95% of the country's crude oil is produced west of the Mississippi River, the states of Texas, California, and Oklahoma producing over 84% of the country's demand; that the oil is moved to the large consuming areas by pipe lines, and also tank steamers from the Gulf points, that there are several pipe lines which extend in an arc across the country from Texas northeasterly through Oklahoma, Kansas, Missouri, Illinois and Indiana, and then due east through Indiana, Ohio, Pennsylvania and New Jersey; that there are also lines from fields in Wyoming which connect with the main trunk line system in Missouri; that Texas and Oklahoma have a network of lines, large and small, fitting into the main trunk lines to the north and others leading down to tidewater on the Gulf Coast; that lines similarly connect Louisiana and Arkansas with the main trunk line system; and that California has its own system linking its fields with the refineries at tidewater.

He further stated that he is familiar with the East Texas Oil Field and with the marketing, transportation, and refining of the oil produced from said field, and the distribution of the refined products thereof; that there are thirteen pipe lines engaged in transporting crude petroleum from the field to various parts of the United States, and that [fol. 156] there are three pipe lines from the East Texas field to Shreveport where part of the oil is refined and shipped to a large number of states, while the rest is re-

piped and reshipped to other points within and without Louisiana; that the other ten pipe lines serving East Texas are the Gulf Refining Company line to Port Arthur, The Humble Oil Company line to Mexia, Houston and Bayton, the Stanolind Oil Company's line to Mexia, the Texas Company's line to Port Arthur, the Texas Company's line to Sand Springs, Oklahoma, the Sun Oil Company's line to Beaumont, the Prairie Pipe Line Company's line to Mexia, the Texas-Empire Company's line to Atreco, Texas, the Atlantic Refining Company's line to Port Arthur, and the Tidal Oil Company's line to the Gulf Coast; and that from the above terminal points the oil or products thereof passes on to other states.

He further stated that another portion of the oil from East Texas is transported by rail some to New Orleans and some northward through Oklahoma and Arkansas.

He further stated that about 90% of all the oil produced in the East Texas field is transported and disposed of as above stated; that of the 10% refined in local refineries, about sixty per cent is shipped by rail to states other than Texas; and that in all, over 85% of the crude oil produced in the East Texas field goes into interstate or foreign commerce, either in the shape of crude oil or the products thereof.

He further stated that there are approximately 560 refineries located throughout the United States, most of which are concentrated in the States of New Jersey, Pennsylvania, Delaware, Ohio, Indiana, and Illinois, and in Texas, Louisiana, and Oklahoma, and also in the Los Angeles Basin and at San Francisco Bay; that the states of [fol. 157] New York, New Jersey, Pennsylvania and Ohio, in the year 1932, refined approximately 20% of the total gasoline refined in the country; Illinois and Indiana approximately 15%; Texas approximately 22%; Oklahoma approximately 7%, and the State of California approximately 16%.

The defendants introduced in evidence a statement of Avary H. Alcorn, an employee of the Department of the Interior, Division of Investigations, who stated that there were, on November 20, 1933, 4,913,960 barrels of crude oil in steel storage located in Gregg, Rusk, Smith, Upshur and

Cherokee Counties, Texas, according to the records of the Department of the Interior, Division of Investigations; that there were approximately 930,317 barrels of oil which, according to the records, was illegally produced; and that the major portion of the 930,317 barrels classed as illegally produced oil was produced between the dates of April 26, 1933 and September 5, 1933.

The defendants introduced in evidence a statement of J. H. LEECH, who stated that he is a Special Agent of the Division of Investigations of the Department of the Interior; that since July 14th he has been engaged in enforcing the regulations issued by the Secretary of the Interior on July 15th and July 25th, 1933, under Section 9 (c) of the National Industrial Recovery Act; that under said regulations, certain reports are required of producers, refiners, brokers, shippers and transporters of crude petroleum; that early in July representatives of the Department of the Interior examined the forms required by the Texas Rail-[fol. 158] road Commission of producers and others and, in order to relieve any producer or other member of the industry of any hardship in making reports, arranged with the Railroad Commission to alter slightly some of their forms so that those forms, when filed by the producers or other members of the industry, would also meet the requirements of the Department of the Interior; that the report from the producer showing the amount of oil produced and the disposition thereof has been made monthly to the Railroad Commission of Texas on a form known as EB; that the form is furnished by the Railroad Commission and the Governmental Agency without cost to the producer; that it is filed with the Railroad Commission and a copy is furnished the Division of Investigations through the Railroad Commission; that this form has long been in use by the Railroad Commission and the furnishing of the information to the Federal Government through the method stated above could not place any undue burden upon any producer; that the information requested on form EB can be easily furnished by any producer or operator, as such should be in his possession for the successful operation of his business and for the further reason that such data would be necessary in preparing gross tax payments to the state and income tax returns to the Federal Government.

He further stated that the information requested of members of the industry is essential for the reason that the reports show oil produced, transported and the distributions thereof; that this information cannot be obtained from sources other than the producers, operators, and other members of the industry who are requested to report; and that the reports are reasonable, since they request only that information which operators, refiners and others required [fol. 159] to make reports have at their finger tips in order to carry on their own individual business.

He further stated that the only alternative to requiring reports would be for the State and Federal Government to maintain a force in the East Texas oil field of some 25,000 to 28,000 men; that this is due to the large number of producing wells in the field (11,490), to the size of the field, to the vast network of pipe lines and gathering systems originating in the field, and to the close proximity of many refineries to producing wells; that there is no other method within his knowledge to check the source of interstate shipments of "hot" oil, and its products; and that by requiring reports, it can be determined who are engaged in transporting oil, which is produced in violation of valid State regulations, and its products, in interstate commerce.

The defendants introduced in evidence a statement by ARCHIE D. RYAN, who stated that his official position is Special Agent in Charge, Division of Investigations, Department of the Interior, and that since July 14, 1933 he has been assigned to East Texas in the enforcement of the Regulations issued by the Secretary of the Interior of July 15th and July 25th, 1933. He further stated facts which agree substantially with the statement of J. H. Leech, as summarized above.

The defendants introduced in evidence a statement by C. R. STARNES, who stated that he is President of Texas Oil Products Company and is familiar with conditions in the oil business in the State of Texas during the past three years and especially with respect to the purchase of crude [fol. 160] oil for refinery operations and the sale of refined products; that a large part of the oil produced in Texas is

transported out of the State and 85% of the products of petroleum refined in the State is shipped out of the State; that overproduction results in oil selling far below the reasonable cost of production, resulting in price cutting, affecting markets throughout the nation; that there is a great deal of oil produced in Texas in excess of the allowable fixed by the Railroad Commission; that such oil is secretly produced and is almost invariably sold at prices below the prevailing market price to refineries generally located near the field; that the refineries which purchase "hot" oil sometimes ship part of it outside of the State; that the refined products of the portion refined within the State often reach customers outside the State at prices lower than the prevailing prices. He further stated that competition of this character is unfair and affects prices over wide areas; that legitimate refineries have to cut their prices to meet the prices given by "hot" oil refineries, with the result that the entire national market is demoralized and great losses occur to royalty owners and law abiding refiners and producers and that the sale of "hot" oil and its refined products, even if confined to the State of Texas, materially affects and burdens interstate commerce in oil and its products.

He further stated that it is impossible by looking at a barrel of oil or at its refined products to tell whether it was illegally produced; that it is extremely difficult to check all producers over a twenty-four hour period, especially in East Texas, where refineries own production and are directly linked to producing wells; that the vast systems of pipe lines, together with other methods of transportation are so numerous and intricate that it is extremely difficult to trace the source of oil or to determine whether the move-[fol. 161] ment is intrastate or interstate; that a simple, reasonable and effective way to check production and trace the movement of petroleum is to ascertain the amounts received or purchased by refineries, the name of the seller, or person delivering and the subsequent disposition of the oil or its products; that forms have been provided for this purpose which cause no undue inconvenience or burden; that many refineries gladly give the information desired and that he believes in order to detect "hot" oil or its products, it is necessary to require reports from refineries and to use other means, such as inspection, to check the accu-

racy of such reports and that no undue burden is imposed thereby upon refineries.

The defendants introduced in evidence a statement by Col. Louis S. Davidson, who stated that he was in the East Texas Oil Field from August 17, 1931 to December 20, 1933, as Provost Marshal until March, 1932, and thereafter as Commander of the Military District under martial law for the purpose of assisting the Railroad Commission in enforcing proration; and that since that time he has been in close contact with the operations in the East Texas Field and is familiar with the same. He further stated that during his experience in the Field, all of the refineries, with the exception of two or three, had their own pipe lines or gathering systems; that these refineries did not use seals on the lock stops or the tank batteries located on the leases, from which they received oil, as is required by legitimate pipe line companies; that these lock stops can be opened at will, allowing oil to flow from the lease to the refineries at the same time that the well is producing oil into tanks; that the Chief Refinery and the Southern Oil & Refining Company have wells flowing directly to storage tanks at the refineries; that it is impossible to determine the amount of [fol. 162] oil produced from the lease to which these refineries are connected, without keeping a man on duty at each of such wells continuously, or without gauging the storage tanks located at the refinery; that he is familiar with the pipe line system in Gladewater and Kilgore, Texas; that oil can be delivered from any point in the East Texas Oil Field, to almost any refinery in the Field and can be delivered from one refinery to another; that during May, June and July, 1933, hundreds of cars of crude oil were loaded and shipped out of the East Texas Field by refineries; that the A & P Oil Company, which is Anding & Potter, the owners of the Panama Refining Company, ship hundreds of cars to the Coast, where they were put into foreign and interstate commerce; that there are numerous cases where the surplus overproduced oil has gone to the refinery and the royalty owner has received one price for his legal oil and a small price for the excess oil; that in many cases royalty owners did not receive payment at all for the overproduced oil; that it is useless to check pipe lines, leases and movements of oil by tank cars, unless re-

fineries are also checked; and that unless all outlets are checked, there is no way of arriving at the total production in the East Texas Field.

The defendants introduced in evidence a statement by D. W. HOVEY, who stated that he is Vice President of the Republic Oil Refining Company; that he is familiar with the oil business in the State of Texas during the past three years and especially with respect to the storage of crude oil for refining operations and the sale of refined products. He further stated facts which agree substantially with the statement of C. R. Starnes, as summarized above.

[fol. 163] The defendants introduced in evidence a statement by J. D. WRATHER, who stated that he is President of the Overton Refining Company and that he is familiar with conditions in the oil business in Texas during the past three years, and especially with reference to the purchase of crude oil for refinery operations and the sale of refined products. He further stated facts which agree substantially with the statement of C. R. Starnes, as summarized above.

The defendants introduced in evidence a statement by G. A. SADLER, who stated that he is General Manager of the Tyler Refining Company and that he is familiar with the oil business in the State of Texas during the past three years, and especially with reference to the purchase of crude oil for refining and the sale of refinery products. He stated facts which agree substantially with the statement of C. R. Starnes, as summarized above.

The defendants introduced in evidence a statement by J. G. PUTERBAUGH, who stated that he is President of Blue Star, Winston, Kenwood and Red Star Oil Companies; that he is familiar with the oil business in the East Texas Field; that much of the oil produced in Texas is transported out of the State; that overproduction has, time and time again, destroyed the price structure and has caused oil to sell in

the East Texas Field at the small figure of 10¢ per barrel; that in reporting the production of oil from his property, he submits monthly reports to the Railroad Commission of Texas on the E-B form furnished him without cost; that a copy of this report is furnished the Department of the In- [fol. 164] terior under Regulations IV, issued by the Secretary of the Interior; that the preparation of this report does not work a hardship upon him, or upon any other producer; that it is easily prepared and the information required is essential to the operator for his own knowledge and the successful operation of his property; and that the reports required by Regulations IV and other regulations are reasonable.

The defendants introduced in evidence a statement by H. F. RICHARDSON, who stated that he is Assistant Secretary and Treasurer of Texas Oil Products Company; that he is familiar with the oil business in Texas and especially with respect to the purchase of crude oil for refining and the sale of refined products. He further stated facts which agree substantially with the statement of C. R. Starnes, as summarized above.

The defendants introduced in evidence a statement by J. R. PEARSON, who stated that he has been an independent oil producer for the past twenty years, with properties in the State of Texas and properties in the East Texas Field for the past two and one-half years; that he has been active in a personal way in assisting the Railroad Commission and the military forces in an endeavor to see that the proration

he and his partners own oil properties in the East Texas Field which, with stabilization and orderly production, are worth over $1,000,000.00, but that with stabilization such as has existed for the past two years, he would lose these properties, leaving him in debt over $300,000.00. He further stated that he has abided by the proration laws, [fol. 165] although others have become rich by breaking them; that he believes the proration program to be proper and right; that during the period of his operation in the Field, he has had close contact with all classes of operation, including production, refining, pipe lines and trucking; that

practically all the refiners in the Field have their own pipe lines or gathering systems and many also own their own wells; that these refineries do not use seals or lock stops on the tank batteries located on the leases, with the result that the lock stops can be opened at any time, allowing oil to flow to the refinery at the same time the well is producing into the same tanks; that he is familiar with the same small pipe line systems connecting these refineries in the East Texas Field; that these lines are so interconnected that oil can be delivered from practically any point in the Field to these refineries and can be delivered from one refinery to another; that royalty owners whose leases are connected to these refineries have no way of knowing how much oil is produced; that he personally owns an interest in the two leases operated by the East Texas Refinery; that in the months of January, February, March and April, 1933, they sent him checks with statements attached for the proper allowable and in the same envelope each month was another check without the statement for eight to ten times the amount of the allowable check; that he returned these checks and requested a statement of the oil run, which it took several months to obtain; that on checking these figures on the oil run, it was discovered that the greater part of this oil, which was reported for January, February, March and April, 1933, was really run in June, July, August, September and December of 1932, when the posted price for oil was higher; that the refineries paid others 40¢ a barrel at the same time they paid him 25¢ a barrel for oil from the same lease; that daily reports from the refinery [fol. 166] would have prevented this overproduction; that because of the intricate system of pipe line connections between wells and refineries and between refineries, it is absolutely impossible to know the amount of oil the refineries handle or whence it comes, unless reports are required; reports from refineries are necessary to supplement reports from pipe lines and producers; that many refineries in the East Texas Field are making these reports and that he believes the reason others refuse to make the reports is because it will disclose the amount of "hot" oil which they are handling.

The defendants introduced in evidence a statement by J. Frank Graham, who stated that he is President of the

Texarkana Oil Company and is familiar with the oil business in the East Texas Field. He further stated facts which agree substantially with the statement of J. H. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable.

The defendants introduced in evidence a statement made by M. T. FLANAGAN, who stated that he is sole owner of Flanagan Production Company and is familiar with the oil business in the East Texas Field. He further stated facts which agree substantially with the statement by J. G. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable.

The defendants introduced in evidence a statement by H. B. WALKER, who stated that he is Superintendent of the [fol. 167] Galvez Oil Corporation and that he is familiar with the oil business in the East Texas Field. He further stated facts which agree substantially with the statement by J. G. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable.

The defendants introduced in evidence a statement by W. R. NICHOLSON, who stated that he is interested in oil producing property in the East Texas Field; that the reports required under the Regulations issued by the Secretary of the Interior are reasonable and have not worked a hardship on anyone and that the reports call only for information that each operator necessarily has to know in the successful operation of his own business.

The defendants introduced in evidence a statement by R. J. RAUCK, who stated that he is Secretary-Treasurer of Wise and Jackson and that he is familiar with the oil business in the East Texas Field. He further stated facts which agree substantially with the statement of J. G. Puterbaugh, as summarized above, to the effect that the reports

required by Regulations IV are reasonable, and have not worked a hardship on anyone and that the reports call only for information that each operator necessarily has to know in the successful operation of his own business.

The defendants introduced in evidence a statement by W. J. COLLINS, who stated facts which agree substantially with the statement by W. R. Nicholson, as summarized above, to the effect that the reports required by the regulations are reasonable.

[fol. 168] The defendants introduced in evidence a statement by R. W. FAIR, who stated facts which agree substantially with the statement by W. R. Nicholson, as summarized above, to the effect that the reports required by the regulations are reasonable.

The defendants introduced in evidence a statement by W. A. WISE, who stated that he is President of Jackson, Wise & Sneeden, and that he is familiar with conditions in the oil business in the East Texas Field. He further stated facts which agree substantially with the statement of J. G. Puterbaugh, as summarized above, to the effect that the reports required by Regulations IV are reasonable.

The defendants introduced in evidence a statement by FRANK C. CONDIN, who stated facts which agree substantially with the statement of W. R. Nicholson, as summarized above, to the effect that the reports required by the regulations are reasonable.

The defendants introduced in evidence a statement by A. D. RYAN, who stated that he is Special Agent in Charge of the Division of Investigations, Department of the Interior at Tyler, and that he has become familiar with the methods employed in producing oil in said field and in

transporting, marketing and refining said oil. He further stated that the greater portion of oil produced in East Texas leaves the field in common carrier pipe lines which form an artery in interstate and foreign commerce; that [fol. 169] a barrel of oil from the East Texas field may move by this system to the Atlantic Seaboard, or it may move to the Gulf ports of Texas to be shipped from Texas ports to foreign countries; that most of the oil which is not taken from the field by pipe lines moves into refineries located in the field; that the products from the refineries go into tank cars or into motor truck tanks to be taken into other states; that oil which goes into the pipe lines to be transported to refineries at points distant from the East Texas field is commingled with the other oil; that likewise oil produced in the East Texas field which goes to refineries located there is commingled in the storage tanks as common stock gathered for said refineries by pipe lines known as gathering lines; that in some cases wells, pipe lines and refineries in the East Texas field are controlled by common ownership; that producers in the East Texas field, in his opinion, know that their oil is commingled as common stock either at the refineries, or in the pipe line, and that a great portion of such common stock moves in interstate commerce.

He further stated that a producer agrees to and takes part in such movement in that he places stock tanks on his lease into which he flows oil from his wells, and that he agrees that a pipe line company engaged in business as common carrier connect the pipe line with the tank and that the pipe line company may take the oil out of the tank for the purpose of mixing said oil as common stock with oil taken from the field and that said pipe line company may transport said oil to a producer either within or without the State and that during said shipment the oil is moving with and is a part of the oil which is actually being transported in interstate commerce. He further stated that the producer of oil assists in this movement because he takes part in its delivery in the same manner as if he had delivered the oil into a railroad tank car on a through run, passing [fol. 170] through several states. He further stated that because of this commingling of oil in the transporting system, it is necessary that the employees of the Division of Investigations be permitted to have access to all oil in

order to be able to determine and verify the disposition of any oil and that oil accumulated in pipe lines for transportation constitutes a continuous movement in interstate commerce, since a large portion of the same forms the supply to the large refineries in Illinois, New Jersey, Pennsylvania, Ohio, Oklahoma and Louisiana.

The defendants introduced in evidence statements by J. W. CLARK, J. M. SHAW, J. P. CANSLER, R. J. COCKE, VOYT WILLIAMS, GUY CRISMAN, G. O. SANDERS and J. M. MILSTEAD, all of whom stated that the Cockburn-Boase leases have been producing more oil than is permitted by orders of the Texas Railroad Commission.

In addition to these statements, there was introduced a letter upon the letter-head of "Cockburn and Boase", dated April 19, 1933, and addressed to J. P. Cansler, which stated in part:

"It is the desire of this Company to run excess oil from this lease and, since you are interested, this firm would like for you to mail to them at P. O. Box 205, Arp, Texas, a letter stating the amount of your interest and also that you are willing for the firm of Martin and Cockburn to run excess oil, obtaining the best market price available to them and receive in full the money for this oil, then paying to you your pro rata part of said money collected for oil sold. * * * To enable us to operate this lease without an actual loss of money, we are required to sell more than is com- [fol. 171] monly called the allowable. To keep in business and to protect our investment, we have definitely decided to take this action. You must either join with us, or produce your own storage for your oil and every barrel of oil that belongs to you will be placed in said storage."

The letter was signed "Martin and Cockburn."

The defendants introduced in evidence statements by J. F. MAGEE, W. O. HARDIN, ERNEST A. SESSUMS, C. P. PORTER, F. H. JONES, KENT B. KNOX, HOWARD E. TYSON, and JAMES H. HALE, all of whom stated that the properties owned by R. J. McMurrey and M. H. McMurrey have been

producing more oil than is permitted by the orders of the Texas Railroad Commission.

The defendants introduced in evidence statements by C. E. TABOR, W. E. FLOREY and SAM WARREN, J. J. McROBERTS, W. H. FRANKLIN and O. B. TAYLOR, all of whom stated that the properties of the Anding & Potter Oil Company have been producing more oil than is permitted by the orders of the Texas Railroad Commission.

The defendants introduced in evidence statemnets by JOS. L. QUINN, J. N. INGLISH, WILSON KEYES, J. H. McCLURE and GEORGE H. BLACK, all of whom stated that the properties of Charles M. Cope have been producing more oil than is permitted by the orders of the Railroad Commission of Texas.

[fol. 172] The defendants introduced in evidence statements by J. H. WRIGHT, D. D. ALEXANDER, BARNEY CARTER, L. C. PETERS, J. L. LENAMON, WALTER S. BEHRENS, J. H. WRIGHT and C. H. WESTBROOK, all of whom stated that the properties of the Amazon Petroleum Corporation have been producing more oil than is permitted by the orders of the Texas Railroad Commission.

Mr. Behrens also stated that the crude oil illegally produced by the Amazon Corporation was commingled with other oil and placed in the Republic Oil and Refining Company's terminal, from which point the same was placed in foreign and interstate commerce, in violation of Section 9 (c) of the National Industrial Recovery Act.

The defendants introduced in evidence statements by W. G. HANRAHAN, BERT McCRAY, J. M. GOODMAN and FRANK C. CONDON, all of whom stated that the properties of W. B. Turnbow, Trustee, have been producing more oil than is permitted by the orders of the Texas Railroad Commission.

The defendants introduced in evidence statements by JOE DEU PREE, WILLIAM E. GUINN and J. G. FLOYD, who stated that on November 21, 1933, they discovered an illegal connection on the W. C. Turnbow Persons lease, Well No. 2, by which oil was being flowed to the Union Refining Company, no tenders having been obtained to run this oil, as is required by the State laws; that this procedure is a means employed to deliver excess oil to refineries known as a "by-pass", so that the amount of oil on the lease cannot be determined by gauging storage tanks located thereon; and that part of the oil so by-passed is [fol. 173] shipped in interstate commerce after it is refined by the Union Refining Company.

The defendants introduced in evidence a statement by SAM KIMBERLIN, who stated that he is District Tax Supervisor, Motor Fuel Division of the Comptroller's Department of the State of Texas; that for the month of August, 1933, Oil Refineries, Inc., located near Overton, Texas, reported interstate and export shipments of motor fuel in the total amount of 1,389,768 gallons and that the reported destination points for such shipments included South Carolina, Ohio, Michigan, Wisconsin, Mississippi, Arkansas, Illinois, Tennessee, Minnesota, Kentucky, Louisiana, Indiana, Nebraska, Iowa, Missouri and Georgia, and that of the 731,227 gallons of motor fuel shipped by five other East Texas refineries, namely, Owl Refining Company, Inc., Foshee Refining Company, Lake Refining Company, Panama Refining Company and Locke Refinery, Inc., 395,075 gallons, or 54 per cent of the total was shipped in interstate or foreign commerce.

The above and foregoing is all the evidence necessary for a review of the rulings assigned as error on this appeal introduced at the trial of said cause and all proceedings had in the trial thereof.

Wherefore, Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants and appellants, pray that the above statement of evidence be settled, approved and allowed by the above entitled court as a true, full and correct and complete statement of all of the evidence necessary for a review of the rulings assigned as error on this appeal taken

and given on the trial of said cause, for use on the appeal [fol. 174] taken to the United States Circuit Court of Appeals for the Fifth Circuit.

Dated this 30 day of March, A. D. 1934.

Charles Fahy, Douglas Arant, Chas. I. Francis, Spl. Asst. to the Atty. Genl., Attorneys for Defendants and Appellants.

STIPULATION AS TO STATEMENT OF EVIDENCE

It is hereby stipulated that the above and foregoing statement of evidence is a true and correct statement of all of the evidence necessary for a review of the rulings assigned as error on this appeal and the same may be approved by the Judge without notice.

Charles Fahy, Douglas Arant, Chas. I. Francis, Attorneys for Defendants and Appellants. W. T. Saye, Saye, Smead & Saye, F. W. Fischer, Edward Lee, Attorneys for Plaintiffs and Appellees.

IN UNITED STATES DISTRICT COURT

ORDER SETTLING STATEMENT OF EVIDENCE

The foregoing statement of evidence is in all respects hereby approved and settled as a true and correct statement of all the evidence necessary for a review of the rulings assigned as error on this appeal and adduced on the trial of the above entitled action.

Dated this 2nd day of April, A. D. 1934.

Randolph Bryant, United States District Judge.

[fol. 175] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

DECREE—Filed Feb. 21, 1934

Came on to be heard said above styled and numbered cause, together with the above numbered causes consolidated therewith; and thereupon came the complainants in

equity cause No. 652, Amazon Petroleum Corporation, a corporation, Barney Cockburn, E. J. Boarse, Charles M. Cope, and W. C. Turnbow Petroleum Corporation, a corporation, with their attorneys, Saye, Smead & Saye; and came also the complainants in equity cause No. 667, Trans-State Corporation, A. H. Tarver, Pelican Natural Gas Company, Dimham Oil Corporation, Oriental Oil Company, K. E. Merren, Canico Oil Company, Adco Oil Company, Laco Production Company, Lexena Oil Corporation, and E. J. Moran, with their attorneys, Saye, Smead & Saye; and came also the complainants in equity cause No. 505 Ortiz Oil Company, Inc., and Deere Creek Oil Company, with their attorney, F. W. Fischer; and came also complainants in equity No. 657, A. F. Anding, Southport Pe-[fol. 176] troleum Company, a corporation, Ironrock Oil Corporation, a corporation, Independent Producers, a corporation, and W. Holloway, with their attorney, F. W. Fischer; and came also complainants in equity cause No. 595, Imperator Oil Corporation, Overton Refining Company, Kilgore Refining Company, K. W. P. Witt, O. L. Hastings, A. N. Landers, W. M. McVey, T. E. Owen, J. Curtis Sanford, Roy Howell, Yandell Rogers, E. J. Bartels, W. H. Wilson, T. J. Whitesides, George F. Thaggard, Arrow Refining & Producing Company, Double L Oil Company, P. D. Bolen, Carl Dunham, J. M. Lapin, G. A. Franklin, and R. S. Harper, with their attorney, F. W. Fischer; and came also complainants in equity cause No. 621, M. E. Trapp and McMurrey Corporation, with their attorneys, F. W. Fischer and W. Edward Lee; and came also complainants in equity cause No. 665, Coffman Production Company, a corporation, and Cemo Production Company, a corporation, with their attorney, F. W. Fischer; and came also the defendants, Archie D. Ryan, Special Agent of the Division of Investigations, Department of the Interior, S. D. Bennett, United States Attorney for the Eastern District of Texas, and Phil E. Baer, United States Marshall for the Eastern District of Texas, with their attorneys, and announced ready for trial; and the United States District Judge Randolph Bryant, upon an examination of the pleadings, ascertained that complainants sought to enjoin certain State officers from enforcing certain proration orders of the Railroad Commission of Texas, and in the same Bills of Complaint sought to enjoin the above-named Federal officers from enforcing certain

regulations and provisions of the Code of Fair Competition for the Petroleum Industry issued and promulgated under the authority of the National Industrial Recovery Act, and it appearing to said District Judge that the cause [fol. 177] of action stated against the State officers presented a case requiring the convening of three judges, the aforesaid District Judge called two judges to his assistance and set the hearing upon application for interlocutory injunction on both causes of action at the same time.

Upon assembling, the statutory three-judge court suggested its want of jurisdiction of the cause of action against the Federal defendants above named as not within Section 380 of the United States Code, and that the cause of action was one for the consideration of the District Judge. Thereupon, all parties desiring the Bills of Complaint to be heard and determined as to both causes of action, it was in open court agreed by all parties, the Judges consenting, and made a matter of record, that each cause should be regarded as submitted to, and to be decided by the tribunal having jurisdiction of it. Upon the conclusion of the evidence it was suggested that the suits be submitted both on the application for interlocutory injunction and on the merits, and the complainants, although pressing their applications for an interlocutory injunction, agreed that the cases might also be submitted upon the merits.

And the Court, being of the opinion that the Bills of Complaint stated two separate and distinct causes of action, one against the State officers, requiring the consideration of three judges, and the one against the above-named Federal defendants, over which the District Judge only had jurisdiction, the two cases were severed and it was ordered that this cause be submitted to the District Judge upon the evidence adduced as against the Federal defendants, and on behalf of the Federal defendants, at the trial before the three Judges, it being stipulated that the issues raised by the pleadings were those presented in the original and supplemental Bills of Complaint filed by the Amazon Petroleum Corporation et al. and the answer [fol. 178] therein filed by the above-named Federal defendants in equity cause No. 652.

And the Court having considered the pleadings, evidence, argument and briefs of counsel, finds that complainants are entitled to injunctive relief against the Federal defendants above named.

It is therefore ordered, adjudged and decreed that the said named defendants, Archie D. Ryan, Special Agent of the Division of Investigations of the Department of the Interior, S. D. Bennett, United States Attorney for the Eastern District of Texas, and Phil. E. Baer, United States Marshall for the Eastern District of Texas, and each of them, their agents, deputies, representatives, and employees, be and they are hereby perpetually enjoined and restrained from enforcing or attempting to enforce against the complainants above named, their agents and employees, Section 4, Article 3, of the Code of Fair Competition for the Petroleum Industry issued and promulgated under and by virtue of the authority contained in the National Industrial Recovery Act; and said named defendants, their agents, deputies, representatives and employees be and they are hereby perpetually enjoined and restrained from requiring of said named complainants, their agents, servants and employees, the reports required under Regulation IV of the Rules and Regulations issued and promulgated by Harold L. Ickes, Secretary of the Interior under the authority contained in Section 10 (a) of the National Industrial Recovery Act; and said defendants and each of them above named, their agents, deputies, representatives, and employees, are further permanently enjoined and restrained from instituting any actions of a civil or criminal nature against said complainants, or either of them, for [fol. 179] alleged violations of the aforesaid Code provisions and regulations above mentioned, and are further perpetually enjoined and restrained from going upon the property of said complainants above named under and by virtue of any authority conferred or attempted to be conferred upon said defendants by the aforesaid Code provisions and regulations above mentioned.

It is further ordered, adjudged and decreed that the complainants have and recover of and from the defendants and each of them, all of their costs herein expended in this proceeding subsequent to the 17th day of February, 1934, the date upon which the decree in the statutory three-judge court above mentioned was entered, for which said costs accruing since said time execution may issue as upon a judgment at law.

It is further ordered, adjudged and decreed that the Bill of Complaint as against the defendant, J. Howard Marshall,

be and the same is hereby dismissed, and that he go hence without day with his costs in this behalf expended, for which he may have execution as in a judgment at law.

It is further ordered, adjudged and decreed that the Marshal serve upon said named defendants, Archie D. Ryan, S. D. Bennett and Phil E. Baer, a copy of this Order.

To the aforesaid Order and Decree the said defendants, and each of them, in open court duly excepted.

Dated this the 21st day of February, A. D. 1934.

(Signed) Randolph Bryant, United States District Judge.

Approved as to form.

Saye, Smead & Saye.

[File endorsement omitted.]

[fol. 180] In United States District Court

Motion for Filing Findings of Fact and Conclusions of Law—Filed March 17, 1934

Now come the defendants in the above entitled and numbered cases and move this Honorable Court to file its Findings of Fact specially and state its Conclusions of Law thereon in conformity with Equity Rule 70½.

Dated this 14 day of March, A. D. 1934.

(Signed) Chas. I. Francis, Attorney for Defendants.

[File endorsement omitted.]

In United States District Court

Findings of Fact and Conclusions of Law—Filed March 17, 1934

This cause, above styled and numbered, together with the numbered causes consolidated therewith, came on to be heard before this Court on December 14, 1933; came the various parties complainant with their attorneys and the various parties defendant with their attorneys; and there-
[fol. 181] upon said cause was heard on the application for temporary injunction and by agreement of all the parties

and with consent of the Court it was stipulated, at the conclusion of the testimony, that this cause also should be determined upon its merits; and the Court having considered the pleadings, evidence, arguments and briefs of counsel upon the issues presented, under the stipulation that such issues were those made by the Bill of Complaint and the supplement thereto filed by the Amazon Petroleum Corporation and the answer and supplement thereto filed by defendants, makes the following findings of fact:

I

That the complainants and each of them are engaged in the production of petroleum in the East Texas Field; that none of the complainants is engaged in shipping petroleum or the products thereof either intrastate or interstate, but all the oil produced by the complainants is sold on the premises where it is produced and title to such oil passes from the complainants upon its being delivered to the buyers on the premises; and that the acts of the complainants do not affect interstate commerce, except incidentally or remotely.

II

The evidence does not show that the complainants have or intend to operate their properties so as to result in waste or destruction of the natural resources of the nation so as to imperil the needs or requirements of the Army or Navy and the national defense of the nation.

III

That the defendant, Archie D. Ryan, is acting under the direction of the Secretary of the Interior to whom the Pres- [fol. 182] ident of the United States has delegated his powers and duties under the National Industrial Recovery Act for the purpose of enforcing Section 9 (c) thereof, and who, also, pursuant to the Presidential authority, acts as Administrator of the Code of Fair Competition for the Petroleum Industry; that the defendant S. D. Bennett is a duly appointed, qualified and acting United States Attorney for the Eastern District of Texas; and the defendant Phil E. Baer is the duly appointed United States Marshal for said district.

IV

That the defendant, Archie D. Ryan, while purporting to act under the direction and as Agent of the Secretary of the Interior pursuant to authority of the National Industrial Recovery Act as a matter of fact is acting beyond his lawful authority and is sued herein as an individual and not as an Agent of the Secretary of the Interior or of the United States Government, and while the defendant, Archie D. Ryan purports to be engaged in regulating interstate commerce under the order of the President made pursuant to Section 9 (c) of the National Industrial Recovery Act, and to be enforcing Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry, as a matter of fact he is attempting to regulate the amount of oil that complainants may produce from their wells and to restrict the production to the allowable fixed by the Railroad Commission of Texas and the allowable fixed by the Code of Fair Competition for the Petroleum Industry.

V

That in demanding the reports complained of by the complainants and demanded under Regulation IV issued by the Secretary of the Interior pursuant to Section 10 (a) of [fol. 183] the Act in demanding the right to go upon, inspect properties, and gauge the tanks of the complainants, the defendant, Archie D. Ryan, is merely seeking to obtain information and evidence which will enable him to accomplish his real purpose of regulating and restricting production from complainants' wells and is demanding these reports and the right to inspect said properties as incident to that objective; and that all of the defendants are threatening to prosecute or to cause complainants to be prosecuted and unless enjoined will prosecute the defendants for failure to make such reports and permit the inspection of their books and records.

VI

That defendants have continually entered upon the premises of the complainants without permission of complainants and have attempted to examine the complainants' books and records relating to production, and have attempted to gauge the tanks of the complainants without the con-

sent of complainants and are threatening and will unless enjoined attempt to continue such acts and to enforce Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry, adopted under Section 3 (a) of the National Industrial Recovery Act, against these complainants by criminal prosecutions under Section 3 (f) of said Act, and by proceedings in Equity under Section 3 (c) thereof; that certain respondents incident to such visitations have dug up and destroyed certain property about complainants' premises.

VII

That the acts of the defendant, Archie D. Ryan, in interfering with the complainants in the operation of their properties and in attempting to restrict the production therefrom and in attempting to compel the complainants to [fol. 184] furnish said reports and to subject their books and records to inspection and in attempting to go upon, inspect and gauge the tanks of the complainants, incident to regulating and restricting the production from their wells as above set forth, results in irreparable loss and injury to complainants from which they have no adequate remedy at law.

Wherefore, the premises considered the Court finds the following conclusions of law:

I

That the Secretary of the Interior is not an indispensable party to the cause of action asserted against the defendant, Archie D. Ryan.

II

That Regulations IV issued by the Secretary of the Interior and the sections of the Code of Fair Competition for the Petroleum Industry, as above set forth, are not authorized by the National Industrial Recovery Act and that the defendants in attempting to enforce said regulations and provisions of the Code of Fair Competition, as aforesaid, are acting without authority of law and their acts in so doing deprived the complainants of their property without due process of law.

To the foregoing findings of fact and conclusions of law, the said defendants and each of them, in open Court, duly excepted.

Dated March 16, 1934.

(Signed) Randolph Bryant, United States District Judge.

[fol. 185] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PETITION FOR SEVERANCE—Filed March 26, 1934

Now comes Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants in the above entitled cause, and show to the Court that they filed their joint Assignment of Errors and Petition for Allowance of appeal from the decree entered in the above entitled cause on the 21st day of February, 1934; that each of their co-defendants, the Railroad Commission of Texas, Lon A. Smith, C. V. Terrell and E. O. Thompson, James V. Allred, H. H. Wellborn, Milton Melhusen, Nat Gentry and J. Howard Marshall, have waived service of notice of appeal and request to join therein; and that each of said co-defendants has further requested that a severance be ordered.

Wherefore, Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants herein, pray that the Court make an order of severance from their co-defendants, the Railroad Commission of Texas, Lon A. Smith, C. V. Terrell and E. O. Thompson, James V. Allred, H. H. Wellborn, Milton Melhusen, Nat Gentry and J. Howard Marshall, for the purpose of an appeal to the United States Circuit Court of [fol. 186] Appeals for the Fifth Circuit from the decree entered herein on February 21, 1934, and for such other and further relief as may be proper in the premises.

Dated March 26, 1934.

(Signed) Charles Fahy, (Signed) Douglas Arant, (Signed) Chas. I. Francis, Attorneys for the Above Named Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING SEVERANCE—Filed March 26, 1934

It appearing that the Railroad Commission of Texas, Lon A. Smith, C. V. Terrell and E. O. Thompson, James V. Allred, H. H. Wellborn, Milton Melhusen, Nat Gentry and J. Howard Marshall, co-defendants in the above cause, have been duly notified and requested by Archie D. Ryan, S. D. Bennett and Phil E. Baer to join in said petition for appeal, but have failed or refused to join therein, the said Archie D. Ryan, S. D. Bennett and Phil E. Baer are hereby granted the right of appeal alone without joining said Rail-
[fol. 187] road Commission of Texas, Lon A. Smith, C. V. Terrell and E. O. Thompson, James V. Allred, H. H. Wellborn, Milton Millusen, Nat Gentry and J. Howard Marshall as appellants.

Dated March 26th, 1934.

(Signed) Randolph Bryant, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

NOTICE OF INTINTION TO APPEAL—Filed March 17, 1934

Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants in the above entitled cause, hereby serve notice upon the complainants herein through their attorney of record of their intention to appeal to the United States Circuit Court of Appeals, Fifth Circuit, from the decree entered herein on the 21st day of February, A. D. 1934.

Charles I. Francis, Attorney for Defendants.

[fol. 188] Due and personal service of copy of the above notice of appeal is admitted this the 14th day of March, A. D. 1934.

Saye, Smead & Saye, Attorney- for Complainants.

Due and personal service of copy of the above notice of appeal is admitted this the 15th day of March, A. D. 1934.

F. W. Fischer, Attorney for Complainants.

Due and personal service of copy of the above notice of appeal is admitted this the 15th day of March, A. D. 1934.

Edward Lee, Attorney for Intervenor M. E. Trap.

[File endorsement omitted.]

[fol. 189] In United States District Court

Petition for Appeal and Stay of Injunction—Filed March 26, 1934

To the Honorable Randolph Bryant, Judge of said Court:

Archie D. Ryan, S. D. Bennett, and Phil E. Baer, your petitioners respectfully show:

1. Petitioners are the defendants in the above entitled cause.

2. On the 21st day of February, 1934, a final decree was entered in said cause against petitioners in the Tyler Division of the Eastern District of Texas.

3. An order has been entered severing petitioners herein from their codefendants for the purpose of an appeal.

4. Your petitioners consider themselves aggrieved by the decree aforesaid and believe there are manifest errors which are set forth in detail in the Assignment of Errors filed herewith and that an appeal may be taken by them from this Honorable Court to the Circuit Court of Appeals for the Fifth Circuit.

5. Unless this Honorable Court grants your petitioners a stay of said injunction pending disposition of the appeal herein to the Circuit Court of Appeals there will be grave and irreparable injury and damage done to your petitioners and to the many producers and refineries of petroleum and the products thereof throughout the State of Texas and elsewhere within the United States, and to the Secretary of the Interior in his efforts to administer the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry.

6. Your petitioners, and each of them, are employees of departments of the United States Government and have [fol. 190] been directed to prosecute appeal herein by said departments and, therefore, said appeal should be allowed without bond, obligation, or other security being required of them, as provided in Section 870, Title 28, United States Code.

Wherefore, your petitioners pray that an order be made allowing them to appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit sitting at New Orleans, Louisiana; and that an order staying the injunction decreed be entered and the decree in all things be superseded pending said appeal; that no bond, obligation, or other security be required of them in connection with said appeal or stay, that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which the decree was rendered, duly authenticated, be sent to the said Circuit Court of Appeals.

(Signed) Charles Fahy, Douglas Arant, Chas. I. Francis, Attorneys for Appellants.

[File endorsement omitted.]

[fol. 191] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed March 26, 1934

Comes now said Archie D. Ryan, S. D. Bennett and Phil E. Baer, defendants in the above entitled cause, and file the following joint Assignment of Errors, upon which they will rely in prosecution of the appeal herewith petitioned for in said cause from the decree of this Court, entered on the 21st day of February, 1934.

1

The Court erred in refusing to dismiss the bills of complaint against the defendant Archie D. Ryan, in that the Court was without jurisdiction to entertain said cause as to him because of the absence in said causes of an indispensable party defendant, to-wit, Harold L. Ickes, Secretary of the Department of the Interior.

2

The Court erred in refusing to dismiss the bills of complaint against all of the defendants.

3

The Court erred in holding that Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is not authorized by the National Industrial Recovery Act and is illegal.

4

The Court erred in failing to hold that Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry is valid and constitutional.

[fol. 192]

5

The Court erred in holding that Regulation IV is not authorized by Section 10 (a) of the National Industrial Recovery Act and is not reasonable and necessary for the enforcement of Section 9 (c) of said Act, and is illegal.

6

The Court erred in failing to hold that Regulation IV is valid and constitutional.

7

The Court erred in holding that the defendants are not authorized by Section 9 (c) of the National Industrial Recovery Act and by the Code of Fair Competition for the Petroleum Industry to go upon the property of the complainants for the purpose of inspecting books and records, and further doing such acts as are reasonable necessary in inspecting such properties, gauging tanks and examining pipes and pipe connections as not reasonable nor necessary for the enforcement of Section 9 (c) of the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry.

8

The Court erred in failing to hold that in authorizing the acts described in paragraph 7 above the Code of Fair

Competition for the petroleum Industry and the National Industrial Recovery Act are valid and constitutional.

9

The Court erred in holding that the defendants are unauthorized to bring criminal prosecutions or actions in equity against complainants for violation of Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry.

[fol. 193]

10

The Court erred in holding that the defendants are not authorized to prosecute or cause to be prosecuted the complainants for failure to submit reports required by Regulations IV.

11

The Court erred in holding that the transactions of the complainants are not in or directly affecting interstate commerce.

12

The Court erred in failing to hold that as a matter of fact 85 per cent of the oil produced in the East Texas field and of the products thereof moves in interstate commerce.

13

The Court erred in failing to hold that the preservation of the nation's petroleum resources is essential to the national defense and to the support of an army and the maintenance of a navy.

14

The Court erred in failing to hold that the production of petroleum in excess of the amount allowed by a valid state order demoralizes the interstate market for petroleum and its products on a nation-wide scale and has a direct effect on established channels of interstate commerce in petroleum and its products.

15

The Court erred in failing to hold that the production of oil in excess of the amount allocated by a valid State order causes a waste of natural resources resulting in a

depletion of the nation's supply of oil which is necessary [fol. 194] to the movement of interstate commerce, to the national defense and to the support of an army and the maintenance of a navy.

16

The Court erred in holding that the defendants are requiring reports or making inspections for any other purposes than the purposes authorized by Section 9 (c) of the National Industrial Recovery Act and Section 3 of Article IV of the Code of Fair Competition for the Petroleum Industry.

17

The Court erred in holding that the defendant, Ryan, is acting beyond the authority delegated to him by the Secretary of the Interior.

18

The Court erred in finding that the defendants have dug up and destroyed certain property about the complainants' premises.

19

The Court erred in failing to hold that a nationwile emergency exists in industry generally, and specifically in the Petroleum Industry.

20

The Court erred in failing to hold that the production of petroleum in excess of the amount allowed by a valid State order constitutes an unfair trade practice within the meaning of the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry.

[fol. 195]

21

The Court erred in finding that the actions of the defendants are causing, and, unless restrained, and will continue to cause irreparable loss and injury to the complainants.

22

The Court erred in finding that the defendants are depriving complainants of property without due process of law.

23

The Court erred in entering the decree granting a permanent injunction against the defendants.

24

The Court erred in entering a decree granting a permanent injunction against the defendants which restrained them from enforcing Article 4 of Section III of the Code of Fair Competition, requiring reports of producers under Regulation IV; and going upon the properties of the complainants in that said decree and injunction are not limited to the doing of such acts in connection with intrastate commerce.

Wherefore, defendants pray that said decrees may be reversed, and for such other and further relief as to the Court may seem just and proper.

Dated the 26th day of March, 1934.

(Signed) Charles Fahy, (Signed) Douglas Arant, (Signed) Chas. I. Francis, Attorney for Defendants.

[File endorsement omitted.]

[fol. 196] In United States District Court

Order Allowing Appeal—Filed March 26, 1934

Upon petition of the defendants Archie D. Ryan, S. D. Bennett, and Phil E. Baer and it appearing to the Court that the appeal herein is being prosecuted pursuant to the direction of the Solicitor General of the United States and the Department of Justice, it is hereby ordered as follows:

1. That an appeal without bond is hereby allowed in the above-entitled cause to said defendants Archie D. Ryan, S. D. Bennett, and Phil E. Baer to the United States Circuit Court of Appeals for the Fifth Circuit from the final decree heretofore entered in said cause on the 21st day of February, A. D. 1934, granting a perpetual and permanent injunction.

2. That the perpetual and permanent injunction issued under the authority of said decree not be stayed.

3. That a citation be issued directed to the complainants herein to be and appear in the United States Circuit Court of Appeals for the Fifth Circuit sitting at New Orleans, Louisiana, within thirty days from the day of taking said appeal as required by law.

4. That the Clerk of this Court transcribe, certify and [fols. 197-199] transmit to the said United States Circuit Court of Appeals for the Fifth Circuit, a true and complete transcript of the record and all other proceedings in this cause as required by law.

Done and ordered at Beaumont, Texas, this 26th day of March, A. D. 1934.

(Signed) Randolph Bryant, Judge of the United States District Court in and for the Eastern District of Texas.

[File endorsement omitted.]

Citation in usual form showing service on F. W. Fischer et al., filed March 26, 1934, omitted in printing.

[fol. 200] In United States District Court

Certificate—Filed March 26, 1934

Elijah Crippen, being first duly sworn, deposes and says:

I hereby certify that I am an officer working under the Attorney General of the United States in the Department of Justice, with the title of "Special Assistant to the Attorney General."

I hereby further certify that the Solicitor General of the United States and the Department of Justice have authorized and directed the following defendants, namely, Archie D. Ryan, S. D. Bennett, and Phil E. Baer, to take an appeal in said cause from the decree of this Court granting a permanent injunction, and to apply for an order staying and superseding said permanent injunction.

Elijah Crippen.

Subscribed and sworn to before me this 24th day of March, A. D., 1934. Mrs. H. I. Griffies, Notary Public in and for Smith County, Texas. My commission expires June 1, 1935. (Seal.)

[fol. 201] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

NOTICE OF ELECTION FOR PRINTING RECORD—Filed April 2, 1934

Archie D. Ryan, S. D. Bennett, and Phil E. Baer, appellants in the above cause, hereby give notice of their election to take and file in the Circuit Court of Appeals for the Fifth Circuit to be printed under the supervision of its Clerk a transcript of the record herein.

This the 2 day of April, A. D., 1934.

Chas. I. Francis, Attorney for Appellants.

[File endorsement omitted.]

[fol. 202] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD—Filed April 2, 1934

It is hereby stipulated and agreed by and between the attorneys for the respective parties that the transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit pursuant to the appeal heretofore allowed herein, shall include the following:

1. Caption.
2. Bill in Equity.
3. Answer of the Defendants, Archie D. Ryan, S. D. Bennett and Phil E. Baer.
4. Amendment and Supplement to Original Bill.
5. Answer to Amendment and Supplement to Original Bill.
6. Amendment and Supplement Bill.
7. Stipulation of all parties, dated March 15, 1934.
8. Statement of the Evidence and Waiver of Notice.
9. The Decree.

10. Motion for Filing Findings of Fact and Conclusions of Law.
11. Findings of Fact and Conclusions of Law.
12. Petition for Severance.
13. Order Allowing Severance.
14. Notice of Intention to Appeal.
15. Petition for Appeal and Stay of Injunction.
16. Assignment of Errors.
17. Order Allowing Appeal Without Bond.

[fol. 203] 18. Citation on Appeal and Acceptance of Service thereof.

19. Certificate of Direction to Appeal.
20. Notice of Election for Printing Record.
21. Stipulation as to Contents of Transcript of Record.
22. Clerk's Certificate.

Charles Fahy, Douglas Arant, Chas. I. Francis, Special Asst. to Atty. Genl., Attorneys for Defendants and Appellants. W. T. Saye, Saye, Smead & Saye, F. W. Fischer, Edward Lee, Attorneys for Plaintiffs and Appellees.

[File endorsement omitted.]

[fol. 204] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

No. 652. Equity

AMAZON PETROLEUM CORPORATION, et al., Complainants,

v.

RAILROAD COMMISSION OF TEXAS et al., Respondents

No. 635. Equity

PANAMA REFINING COMPANY et al., Complainants,

v.

A. D. RYAN et al., Respondents, And Cases Consolidated Therewith

OPINION OF THE COURT—Filed Feb. 12, 1934

BRYANT, District Judge:

In these related cases complainants attack the validity of an Act of Congress known as the National Industrial Re-

covery Act, and certain regulations of the Secretary of the Interior, the provisions of the Code for the petroleum industry established under the Act, upon constitutional grounds.

In the Anding and Panama Refining Company cases a rule to show cause was issued returnable October 2, calling upon the respondents, Ryan, et al., to show cause why a preliminary injunction should not be granted as prayed. On the hearing upon this rule, and the respondent's answer [fol. 205] thereto, the rule was discharged and the application for preliminary injunction denied. The cause was thereupon set for final hearing upon November 6th. Shortly thereafter, a similar attack was made upon the statute and the regulations by the complainants in the other cases listed above, in which the individual members of the Railroad Commission of Texas, their agents, the Attorney General of Texas, and various district and county attorneys of the State were made respondents, and in which the complainants invoking the Fourteenth Amendment, sought injunctive relief, interlocutory and final, to restrain enforcement against them of certain orders of the Railroad Commission limiting their production of oil.

It appearing that the latter cause of action presented a case for three judges, a statutory court was ordered assembled to pass upon the constitutional question raised.

The statutory court in limine suggested its want of jurisdiction over the cause of action against the Federal respondents as not within Section 380, and decided that such cause of action was for the consideration of the District Judge alone.

All parties desiring the application to be heard and determined as to both causes of action, it was in open court stated and agreed to by all parties, and the judges consenting, made matter of record, that each cause should be regarded as submitted to and to be decided by the tribunal having jurisdiction of it. It was further stipulated of record in the latter suits filed, that the suits be submitted on the evidence taken at such hearing, both on the application for interlocutory injunction and on the merits.

The pertinent portions of the Act of Congress involved are as follows:

[fol. 206] "An Act to encourage national industrial recovery, to foster fair competition and to provide for the

construction of certain useful public works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I—Industrial Recovery

Declaration of Policy

Section 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sonctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards [fol. 207] of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Administrative Agencies

Section 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities and tenure, and, without regard to the Classification Act of 1923, as amended, to

fix the compensation of any officers and employees so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Codes of Fair Competition

Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the [fol. 208] President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices: Provided further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any trans- [fol. 209] action in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade, or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be [fol. 210] fined no more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

Oil Regulation

Sec. 9 (a) The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations

of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

[fol. 211] Rules and Regulations

Sec. 10 (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

(b) The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed or issued under this title shall contain an express provision to that effect."

The President, pursuant to the claim of power granted to him by said Section 9 (c), issued an Executive Order prohibiting the transportation in interstate and foreign commerce of all petroleum and the products thereof produced or withdrawn from storage in excess of the amount

permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any board, commission, officer or other duly authorized agency of the State.

The President duly delegated to the Secretary of the Interior his power and functions by Executive Order and authorized the Secretary of the Interior to make all necessary or desirable rules or regulations.

Thereafter, the Secretary of the Interior issued rules and regulations purporting to effectuate said Executive Order and Section 9 (c) of the Act. It is paragraph 4 and 5 of these rules and regulations which are attacked in [fol. 212] the present suits and they provide substantially as follows: Regulation 4 requires each producer of petroleum to file a statement under oath not later than the 15th day of each month with the Division of Investigations of the Department of Interior, giving (1) the residence and post office address of the producer; (2) the location of his producing properties and wells, the allowable production therefor as fixed by the State agency; (3) the daily production in barrels; (4) details of deliveries of petroleum and the amount in storage at the beginning and end of the month; and (5) a declaration that no part of the petroleum or products thereof produced and shipped has been produced or withdrawn in violation of State law or valid regulation.

Regulation 5 requires every refiner to file a statement not later than the 15th of each month, with said Division of Investigations, containing the following information: (1) the residence and post office address of the refiner; (2) the place and date of receipt, with names and business addresses of the producers or parties from whom the petroleum was received, the amount received, and the amount held in storage on the last day of the calendar month preceding the period covered by the report; (3) details as to the disposition of said petroleum and the amount held in storage or otherwise at the end of said calendar month; (4) a declaration that to the best of the information and belief of the affiant, none of the petroleum received or disposed of, was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by State law or valid regulation.

The Code of Fair Competition, as provided for in Section 3 (a) of the Act, as it relates to the petroleum industry, provides among other things as follows:

(a) That complainants and other producers engaged in [fol. 213] the producing of oil shall pay their employees not less than a specified wage;

(b) Shall not work their employees in excess of a specified number of hours per day;

(c) That all employees engaged in similar work shall work the same number of hours, and be paid at least a specified wage, the hours of service and rates of pay being subject to change by the President;

(d) That complainants, and all persons subject to the code, shall insert in all contracts made by them for work to be done in the industry, whereby the contractor shall agree that all of his employees, and all employees of any subcontractor shall be paid the rates prescribed by said code, and that the schedule of hours of all such employees conform to these prescribed by said code;

(e) That complainants, and other members of said industry, shall not, as a condition of employment, require any employee or anyone seeking employment to join any union or refrain from joining any union or labor organization;

(f) That complainants, and other oil producers be prohibited from storing oil or withdrawing oil from storage without the consent and approval of a Planning and coordinating Committee appointed by the President;

(g) That not in excess of 100,000 barrels of oil shall be withdrawn from storage in the United States on any day;

(h) That required production of oil to balance consumer demand for petroleum products shall be estimated by a [fol. 214] Federal agency designated by the President; that allocation of such requirements shall be made among the states, and no state shall be permitted to produce in excess of such allocation, all allocations to be approved by the President.

The general claim of complainants as against respondents is substantially as follows: that the complainants (producers) are not engaged in shipping any oil either intrastate or interstate, but are engaged solely in the business of producing and marketing oil. The oil is sold by them on their respective leases and title to such oil passes from complainants upon its being delivered to buyers on the premises where it is being produced. They further claim that the respondents are purporting to act under authority conferred by the National Recovery Act, the Executive Order above referred to, and that the President, assuming to act in his official capacity but without any authority whatever, approved and promulgated what is known as the Code of Fair Competition for the Petroleum Industry, and that by the Executive Order referred to, he attempted to delegate to the Secretary of the Interior full power and authority to enforce and carry into effect the provisions of the National Recovery Act relating to the Petroleum Industry. That the respondents are attempting to enforce the aforesaid code and orders as against these complainants and as an incident to such enforcement are demanding of and compelling complainants to furnish them with reports required by the regulations referred to above, and that as an incident to the enforcement of such demand, they make repeated inspections of complainants' properties and gauge their tanks to ascertin the amount of oil being produced by them. That certain respondents, [fol. 215] incident to such visitations have dug up and destroyed certain property about complainants' premises, and will in the future continue to assert such rights of visitation and inspection and invasion of complainants' property rights unless restrained from so doing; that the Federal officers have stated that if the complainants do not comply with said orders and regulations and provisions of the code, they will cause them to be arrested and prosecuted under Section 9 (c) of the National Recovery Act, and that unless restrained said Federal officers will institute and prosecute actions, both civil and criminal against the complainants, which will result in irreparable injury and damage to complainants, for which they have no adequate remedy at law.

The only difference in the case made as to the refiners is that they are engaged exclusively in the production and manufacture of products from crude petroleum; that they

are not engaged in interstate commerce and that none of their products when sold by them go into the channels of interstate commerce.

The evidence is without contradiction that the complainants in this case are not actually engaged in interstate commerce.

The claim is made that the provisions of the National Recovery Act, code and regulations, are null and void because:

(a) It is an attempt by Congress to delegate its legislative powers to the President.

(b) It is an attempt by Congress to vest in the President the powers of a supreme dictator, contrary to the National Constitution, and contrary to our Republican form of government.

(c) It authorizes the President to exercise police powers not granted to the National Government by the several [fol. 216] states of the Union, and is in violation of the 10th Amendment to the National Constitution.

(d) It deprives complainants of their natural and inherent rights contrary to the 9th Amendment to the National Constitution.

(e) It deprives complainants of their property without due process of law, in violation of the 5th Amendment to the National Constitution.

(f) It violates both the 4th and 5th Amendments to the National Constitution, in that it attempts to give the Federal Government the right to compel the complainants and others to produce their papers and effects, compels them to give evidence against themselves, and deprives them of liberty and property without due process of law.

(g) It is contrary to the 7th Amendment to the National Constitution in that it imposes excessive fines and cruel and unusual punishment.

To this claim or right by complainants, respondents answer by saying in general that under a declared emergency the powers of Congress are expanded beyond their extent under ordinary circumstances, and in ordinary times, and that under the commerce clause, the Federal Government

has the power to control the production of petroleum, and that while ordinarily the production of oil or refining thereof is not interstate commerce, that this may so affect interstate commerce so as to come within the regulatory power of Congress. That the Act does not constitute an unlawful delegation of legislative power and is valid.

The majority opinion this day filed has adjudged that [fol. 217] the orders of the Railroad Commission of Texas are valid.

For the purposes of this opinion, it may be conceded that Congress may prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted. The further exceedingly doubtful concession may be made that the Act does not delegate legislative power and authority to the President so that the essential point for decision is as to the validity of the regulations issued by the Secretary of the Interior and the provisions of the code and their binding effect, if any, upon the complainants, under the facts disclosed in this matter.

The above concessions and assumptions are indulged because I have reached the conclusion that the regulations and the code provisions involved have no constitutional basis as applied to the facts of this case.

This is another of those cases which have so frequently engaged the attention of the national courts involving as it essentially does a contest between state and Federal authority and more particularly the extent to which the Federal Government may go in its exercise of authority in regulation of matters ordinarily committed to the regulation of the States.

Owing to the apparent importance of the matter, a statement of my reasons for the conclusion reached is deemed proper.

It has been decided specifically and unequivocally by the Supreme Court that mining is not interstate commerce and the power of Congress does not extend to its regulation as such. United Mine Workers of America v. Coronado Coal Company, 259 U. S. 407. Champlin Refining Co. v. Corp. Comm., 286 U. S. 210.

[fol. 218] As said by the Supreme Court in Oliver Iron Mining Co. v. Lord, 262 U. S. 171, 178: "Mining is not

interstate commerce but like manufacturing is a local business subject to local regulation and taxation. Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements and persists even though the business be conducted in close connection with interstate commerce."

The decisions of the Supreme Court further show that the making or manufacturing of goods are not commerce nor does the fact that these things are to be afterward shipped or used in interstate commerce make their production a part thereof. Hammer v. Dagenhart, 247 U. S. 251, 272.

The Supreme Court said in the famous Child Labor case: "The control by Congress over interstate commerce cannot authorize the exercise of authority not entrusted to it by the Constitution. Pipe-line cases, 243 U. S. 548, 560. The maintenance of the authority of a State over matters purely local is as essential to the preservation of our existence as is the conservation of the supremacy of the Federal power in all matters entrusted to the nation by the Federal Constitution. In interpreting the Constitution it must never be forgotten that the nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the national government are reserved. Lane County v. Oregon, 7 Wall. 71, 76. The power of the States to regulate their purely internal affairs by such laws as seem wise is inherent and has never been surrendered to the general government * * * This court has no more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limita-
[fol. 219] tions upon the exercise of authority, federal and State, to the end that each may continue to discharge harmoniously with the other the duties entrusted to it by the Constitution."

As said in Ohio Oil Company v. Indiana, 177 U. S. 190, 211, 212: "In view of the fact that regulations of natural deposits of oil and gas and the right of the owner to take them as an incident of title in fee to the surface of the earth, as said by the Supreme Court of Indiana, is ultimately but the regulation of real property and they must hence be treated as relating to the preservation and protection of rights of an essentially local character."

In the case of Kidd v. Pearson, 128 U. S. 1, the Supreme Court in discussing the extent of the authority of the Federal Government under the commerce clause, among other things said: "The line which separates the province of Federal authority or the regulation of commerce from the powers reserved to the States has engaged the attention of this court in a great number and variety of cases. The decisions in these cases, though they do not in a single instance assume to trace that line throughout its entire extent or to state any rule further than to locate the line in each particular case as it arises, have almost uniformly adhered to the fundamental principle which Chief Justice Marshall in the case of Gibbons v. Ogden, 9 Wheat 1, laid down as the nature and extent of the grant of power to Congress on this subject and also the limitations, expressed and implied, which it imposes upon State legislation with regard to taxation, to the control of domestic commerce and to all persons and things within its limits of purely internal concern * * * no distinction is more familiar to the common mind nor more clearly expressed in political literature than that between manufacture and commerce. [fol. 220] Manufacture is transformation, the fashioning of raw materials into a change of form for use; the functions are different; the buying and selling and the transportation incident thereto constitutes commerce and the regulation of commerce in a constitutional sense embraces the regulation at least of such transportation. Commerce with foreign countries and among the states strictly considered consists in intercourse and traffic, including in its terms navigation and the transportation and transit of persons and property as well as the purchase, sale and exchange of commodities. If it be held that the term includes the regulation of all such manufactures as were intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested to the exclusion of the States with a power to regulate not only manufacturers, but also agriculture, horticulture, stock-raising, domestic fishing, mining * * * in short, every branch of human industry. * * * It was said by Chief Justice Marshall 'that it is a matter of public history that

the object of vesting in Congress the power to regulate commerce with foreign nations and among the several states was to insure uniformity of regulations against conflicting and discriminating State legislation.'"

The Supreme Court again in the case of County of Mobile v. Kimball, 102 U. S. 692, laid down the rule as to the constitutional limitations of Congress under the commerce clause in which it held that the power of Congress to regulate interstate commerce is unlimited, but that in regulating commerce between the State and foreign countries the regulations must be uniform and of one system or plan. The reason is obvious, being so that no discrimination would occur by reason of such legislation.

[fol. 221] In the case at bar the regulations sought to be enforced against the complainants apply only to the East Texas and the Oklahoma City oil fields, showing conclusively that they are not intended or meant to be regulations of commerce in a constitutional sense, but merely an attempt upon the part of the Federal government to limit the production of oil from these two fields, and to control the manufacture thereof, essentially matters of State regulation.

It may be argued that the purpose of these statutes as set forth in the declarations of emergency, and of policy by Congress are much broader than the commerce power of Congress and that these purposes of national rehabilitation are sought to be accomplished through a variety of effort of mutual and voluntary agreement which carry no penalties and also by a variety of mere money spending activities of the Federal government particularly in the aid of agriculture.

It is nevertheless true however, that in those provisions in which the government exhibits the heavy hand of authority to control or to compel a surrender of individual right and individual initiative in the fields of agriculture and of industries with pains and penalties, the statutes themselves in their very terms base the power to enforce upon the commerce clause. In this respect the intention of Congress has been made clear.

This conclusion finds support in the legislative history of this Act. Senator Wagner of New York, who was largely instrumental in the formulation and drafting of this legislation, said: "I have been discussing codes which are vol-

untary both as to their competitive practices and as to their labor provisions, and it is primarily upon such spontaneous action that the bill relies. It is not my intention to substitute government for business, or to remove from the [fol. 222] shoulders of business men the responsibility for economic recovery. The duties of industrialists are enhanced by the opportunities which the bill offers for constructive cooperation." Again, in the same address, he said: "The question of the proper exercise of Federal authority depends upon whether the bill confines itself to national matters or whether it attempts to extend to matters which are of purely local concern. The answer is clear. The language of the bill expressly provides that any compulsory measures such as the licensing feature of the bill, and any penalties for violation of the codes *shall be confined to business in or affecting interstate commerce. Thus no attempt is made to extend Federal action to an area of activity not covered by the commerce clause of the Constitution.*"

Legislative intent is made plain when the statute, after making provision for the codes and providing that said codes shall be the standards of fair competition says: "Any violation of such standards *in any transaction in or affecting interstate or foreign commerce* shall be deemed an unfair method" etc. Section 3 (b).

It is a matter of common knowledge that the provisions of the codes do not stop with interstate commerce or with those trades or industries that are interstate in character. There is no pretense of such limitation. To bring such transactions within the constitutional regulatory power of Congress enforceable under penalty of the law, it is necessary to consider that Congress may under the power to regulate interstate and foreign commerce reach back into the states and control without limit the source of production and manufacturing processes, dictate the hours of labor, wages to be paid, the conditions of employment and the relation of employer and employee.

That such was not the intent of Congress except as it [fol. 223] related to interstate transactions in fact is thus made clear.

It being made clear from the evidence in this case that complainants have not subscribed to such code and are not engaged in interstate commerce, they are not subject to the

pains and penalties provided by the Act for violation of such code, because they are clearly not engaged "in any transaction in or affecting interstate or foreign commerce."

To sustain a pretension to powers so vast and so unprecedented and so unheard of should certainly find its basis in the clearest expression of intent upon the part of Congress. Under the plain terms of the Act the expression of intent is to the contrary.

The power to regulate commerce between the states is without question one of the full, complete and plenary powers of Congress. As was said by the Supreme Court in the cases of Houston Texas Railroad v. United States, 234 U. S. 342, "It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that where it exists it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local government. The purpose was to make impossible the recurrence of the evils which had overwhelmed the confederation and to provide the necessary basis of national unity by insuring uniformity of regulation against the conflicting and discriminating state legislation. By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interest by securing the freedom of interstate commercial intercourse from local control. Gibbons v. Ogden, 9 Wheat [fol. 224] 1, 196, 224; Brown v. Maryland, 12 Wheat 419, 446; County of Mobile v. Kimball, 102 U. S. 691, 696, 697; Smith v. Alabama, 124 U. S. 45, 473; Second Employers Liability Cases, 223 U. S. 1, 47, 53, 54; Minnesota Rate Cases, 230 U. S. 352, 398, 399.

It would neither be instructive nor profitable to undertake to review the numerous cases in which the Supreme Court has upheld the exercise of this power. It may simply be admitted that they go the full length in sustaining legislation by Congress in regulating local conditions or activities which have the effect of directly interfering with interstate commerce so as to be an obstruction or burden thereon.

In Board of Trade v. Olsen, 262 U. S. 1, where the Grain Futures Act was involved, it was held that "whatever amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate com-

merce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent."

Here Congress has not declared any local activity or condition as constituting a burden upon interstate commerce. As is said in United States v. Ferger, 260 U. S. 199: "It follows that sales for future delivery on the Board of Trade are not in and of themselves interstate commerce. They cannot come within the regulatory power of Congress as such *unless they are regarded by Congress from the evidence before it as directly interfering with interstate commerce so as to be an obstruction or burden thereon.*"

[fol. 225] As was further said in the Olsen case: "In the Act we are considering Congress has expressly declared that transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce and render imperative for the protection of such commerce and the national public interest therein."

Here there is no such expression of judgment finding or will by Congress. There is not here shown any entry by Congress either directly or through its agency into the exclusive province of the State in dealing with intrastate activities except where those engaged in purely intrastate activities consent to the provisions of the code by subscribing thereto, which is not the case here.

There is not perceived in the terms of this Act any intention, express or implied, by Congress to invade the sphere of purely local action in aid of or to remove burdens or restrictions upon interstate commerce. In such connection it is interesting to note the observations of the present Chief Justice in an argument before the Federal Oil Conservation Board in 1926, when he was speaking in the capacity as counsel for his client, The American Petroleum Institute, and wherein he quotes the language of the Supreme Court as found in the Coronado case and the Oliver Mining Company v. Lord, supra to show that oil production is not commerce and then proceeds as follows:

"It may therefore be safely taken for granted that under the powers to regulate commerce Congress has no constitutional authority to control the mere production of petroleum on lands (other than Indian lands) within the territory of a State. All plans for requiring unit operation or otherwise, which involved the assertion of such a power on [fol. 226] the part of Congress do not require discussion. They proceed from an utterly erroneous conception of Federal power. It does not further the policy of conservation to take up the public attention with futile proposals which disregard the essential principles of our system of government."

Further, he stated: "I am aware that it has been suggested that such Federal power to control production within the states might be asserted by Congress because it could be deemed to relate to the provision for the common defense and the promotion of the general welfare." (An argument made in this case in the brief of the Solicitor of the Department of Interior.) The Chief Justice continuing said: "Reference is sometimes made in support of this view to the words of the preamble of the Federal Constitution. But as Story says 'The preamble never can be resorted to to enlarge the powers confided to the general government or any of its departments. It cannot confer any power per se; it can never amount, by implication, to an enlargement of any power expressly given.' ". 1 Story on the Constitution, Sec. 462. And this statement was approved by the Supreme Court of the United States in Jacobsen v. Mass., 197 U. S. 11, 22.

"The suggestion to which I have referred is an echo of an attempt to construe Article I, Section 8, subdivision 1 of the Constitution of the United States, not as a power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States,' but as conferring upon Congress two distinct powers, to wit: (1) the power of taxation and (2) the power to provide for the common defense and the general welfare. In this view, it has been urged that Congress has the authority to exercise any power that [fol. 227] it might think necessary or expedient for the common defense or the general welfare of the United States. Of course, under such a construction the government of the United States would at once cease to be one of enumerated powers and the powers of the states would be wholly illu-

sory and would be at any time subject to be controlled in any matter by the dominant Federal will exercised by Congress on the ground that the general welfare might thereby be advanced. That, however, is not the accepted view of the Constitution. (1 Story on the Constitution, secs. 907, 908; 1 Willoughby on the Constitution, sec. 22.) The government of the United States is one of enumerated powers and is not at liberty to control the internal affairs of the states respectively such as production within the States, through assertion by Congress of a desire either to provide for the common defense or to promote the general welfare."

The government claims that under a declared emergency powers of Congress are expanded beyond their extent under ordinary circumstances and in ordinary times, and relies upon the cases of Highland v. Russell, 279 U. S. 253; Block v. Hirsh, 256 U. S. 135; Brown v. Feldman, 256 U. S. 170; Wilson v. New, 243 U. S. 332; Chastleton v. Sinclair, 264 U. S. 543.

In each of the above cases the action complained of was predicated upon an actual existing power of government and the emergency was only the occasion for bringing the power into exercise.

However, as has been very aptly said by the Supreme Court in the recent case of Home Building and Loan Association v. John H. Blaisdell & Wife, 290 U. S. 255, "emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution [fol. 228] was adopted in a period of grave emergency. Its grants of power to the Federal government and its limitations of the powers of the States were determined in the light of emergency and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been and always will be the subject of close examination under our constitutional system."

"While emergency does not create power emergency may furnish the occasion for the exercise of power. 'Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed.'" Wilson v. New, 243 U. S. 348.

By Section 9 (c) the President "is authorized to prohibit the transportation *in interstate and foreign commerce*

of petroleum and the products thereof, produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder by any board, commission, officer or other duly authorized agency of the State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable," etc.

By Section 10 (a) "The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purpose of this title."

Indulging as is indicated above, the violent presumption that Section 9 (c) is valid in the face of the complaint made against it to the effect that it is an abdication by Congress of its function of legislating and an unconditional delegation of authority to the President of its power to legislate, the inquiry arises as to the validity of the regu- [fol. 229] lations made pursuant to this provision. It might be said in passing that there cannot be perceived from this expression of Congress any expression of will or intent of its own, and that it prescribes no penalty for a violation of the Act, but that the penalty prescribed is for violation of any orders that the President might make under the Act and that it further provides that the President may terminate the same at any time he sees fit.

Entertaining as I do the gravest misgivings, if not the absolute certainty of conviction that this provision of the Act is invalid by reason of its delegation to the Executive of legislative authority, yet conceding it for the purposes of the decision to be valid, it is obvious that the President and his agents in their rules and regulations could exercise no greater authority nor to any greater extent than that which was exercised by Congress itself. This is limited to the transportation in interstate and foreign commerce of petroleum and the products thereof, etc.

It has been repeatedly held that in order to subject one to inquisitions, visitations and interrogations by extrajudicial bodies for the purpose of obtaining information against them, statutory authority for such claim of right must be shown to plainly and definitely confer upon such bodies such authority. Overton Refining Company v. C. V. Terrel, et al., 459 in Equity in this court. Counselman v. Hitchcock, 142 U. S. 547. Interstate Commerce Commission v. Brimson, 154 U. S. 448. Harriman v. Interstate Commerce Commission, 211 U. S. 408.

As there is nothing contained in the statute authorizing the action complained of on the part of the respondents, it is clear that such regulations requiring such reports and the going upon the property of the complainants by the [fol. 230] respondents, gauging their tanks and digging up their pipelines are without authority of law.

But the respondents say that the regulations in question are: (1) reasonably necessary to carry out the purposes of the Act and (2) that they do not infringe upon constitutional rules, but there cannot be read into the Act any intention of Congress to invade the rights of the State to regulate matters of purely local concern and regulation such as the production of oil and the refined products thereof where they have no relation to and do not go into interstate commerce, and it is not competent for the Secretary of the Interior, however good his motives, to enlarge by regulation upon the provisions of the Act itself.

Since the Act in terms only authorizes the prohibition of the transportation in interstate and foreign commerce of petroleum and the products thereof; it certainly cannot be extended to cover by regulation those who are obviously not engaged in the transportation of such products in interstate or foreign commerce or engaged at all in interstate or foreign commerce.

The other provisions of Section 9 (c) relating to transportation in interstate commerce recognize the validity of State regulations and the action of the State regulatory body in fixing the amount of withdrawals and the amount to be produced. This in itself is a denial of any intention upon the part of Congress to grant to national officers the right to act in regard to the production of crude oil or the manufacture of its products.

Such action by officers of the National government is obviously an indirection and evasion contrary to the terms of the Act itself in an attempt to regulate and control the [fol. 231] production of oil and the manufacture of products therefrom, a matter committed solely to the discretion of the State.

As was said in Stafford v. Wallace, 258 U. S. 496, where the Act gave the Secretary of Agriculture a large measure of control over the stockyards of the country and which control extended to practically all the methods of doing business therein, even to the price to be charged for the services rendered in the stockyard. The Supreme Court

said: "What there amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congres under the commerce clause. *And it is primarily for Congress to consider and decide the fact of the danger and meet it.* This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent." Here there has been not only no determination by Congress of a practice there threatens to obstruct or unduly to burden the freedom of interstate commerce except as it relates, if at all, to the transportation in interstate and foreign commerce of petroleum and its products. It has not considered and decided the fact of any other danger to or burden upon interstate commerce and the regulations of the Secretary of the Interior certainly cannot override and enlarge the determinations of Congress by mere regulation to the prejudice of the rights of the State over matters of purely local concern.

The case here is about the same as Stafford v. Wallace, if, under the facts of that case the Secretary of Agriculture had by regulation required that every domestic producer of livestock, engaged solely in intrastate commerce, give him information as to the kind and character, [fol. 232] description and age, color and sex of the livestock so raised, something which obviously had no relation to the matter of local practice or condition which Congress was attempting to affect by regulation: then the situation there and here would be fairly comparable. Such a requirement would have had no reasonable relation to the expressed will of Congress and so here. The regulations of the Secretary of the Interior have no reasonable or any relation to the will of Congress expressed in this Act. To admit of the authority of the Secretary of the Interior to make such regulations as those involved here is to go in the face of the terms of the Act itself. Such an invasion of the rights of the States is not permissible in our dual form of Government.

The facts of this case clearly and obviously disclose that the regulations seek by indirection to evade constitutional limitations by superseding State authority to which the power is clearly committed to regulate the local production of crude oil and to supervise the manufacture of products therefrom.

As said in Boyd v. United States, 116 U. S. 616: "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure.

This can only be obviated by adhering to the rule that Constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon. Their motto should be obsta principiis."

[fol. 233] As if apropos of the situation here presented, John F. Dillon, addressing himself to the constitutional provisions written for the protection of life, liberty and property, years ago said: "If there is any problem which can be said to be yet unsettled it is whether the bench of this country, State and Federal, is able to bear the great burden of supporting under all circumstances the fundamental law against popular or supposed popular demands for enactments in conflict with it. It is the loftiest function and the most sacred duty of the judiciary * * * unique in the history of the world * * * to support, maintain and give full effect to the Constitution against every act of the legislature or the Executive in violation of it. This is the great jewel of our liberties. We must not, 'like the base Judean, throw a pearl away richer than all his tribe.' This is the final breakwater against the haste and passions of the people. Against the tumultuous ocean of Democracy. It must at all costs be maintained." Dillon's Laws and Jurisprudence of England and America, page 214.

The above conclusions obviate the necessity of discussion of the other constitutional questions raised.

A decree may be presented in accordance herewith.

[File endorsement omitted.]

[fol. 234] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 235] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

[fol. 236] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT, PHIL E. BAER, Appellants,

vs.

AMAZON PETROLEUM CORPORATION et al., Appellees

Motion of Appellants for Supersedeas and Stay

MOTION OF APPELLANTS FOR SUPERSEDEAS AND STAY AND AFFIDAVIT IN SUPPORT—Filed April 4th, 1934

To the Honorables the Justices of the United States Circuit Court of Appeals for the Fifth Circuit:

Acting pursuant to the direction of the Solicitor General of the United States and the Department of Justice, come now the above named appellants, through their attorneys, Charles Fahy, Douglas Arant and Chas. I. Francis, and show unto your Honors that on the 21st day of February, 1934, the Honorable Randolph Bryant, Judge of the United States District Court for the Eastern District of Texas, entered a decree granting a permanent and perpetual in- [fol. 237] junction in a certain cause entitled Amazon Petroleum Corporation et al., plaintiffs, versus Archie D. Ryan et al., defendants, in Equity Cause No. 652 and Consolidated Causes 667, 505, 595, 621 and 665, then pending in said Court.

The District Court by its decree granted a permanent and perpetual injunction enjoining and restraining Archie D. Ryan, Special Agent of the Division of Investigations, Department of the Interior of the United States, S. D. Bennett, United States Attorney for the Eastern District of Texas, and Phil C. Baer, United States Marshal for the Eastern District of Texas, and each of them, their agents, deputies, representatives and employees, from enforcing or attempting to enforce against the complainants

Section 4, Article III of the Code of Fair Competition for the Petroleum Industry; from requiring from the complainants the reports required under Regulation IV of the Rules and Regulations issued and promulgated by the Secretary of the Interior under authority contained in Section 10 (a) of the National Industrial Recovery Act; from bringing any action, civil or criminal, against the complainants for alleged violations of the aforesaid Code and Regulations, and from going upon the property of the complainants by virtue of any authority conferred or attempted to be conferred by the aforesaid Code and Regulations. Appellants urge below and again urge here that the District Court erred by the reasons specifically set forth in the Assignment of Errors. Appellants, pursuant [fol. 238] to the direction from the Solicitor General of the United States and the Department of Justice, have taken appeal from said decree and permanent injunction and the same has been duly allowed by said District Judge.

On the 26th day of March, A. D. 1934, your Appellants petitioned the District Court in said cause for a supersedeas and stay of said decree and injunction pending disposition of this appeal; and the District Court denied said supersedeas and stay of the injunction.

Unless this Honorable Court grants a supersedeas in this cause and stays all proceedings under or by virtue of said order, there will be grave and irreparable injury and damage done to said appellants and to the producers of petroleum in the State of Texas and elsewhere throughout the United States, and to the Secretary of the Department of the Interior in his administration of Section 9 (c) of the National Industrial Recovery Act. The effect of the decree and the injunction will be to bring to a complete halt the Government's program in and for the petroleum industry in the State of Texas and elsewhere throughout the United States, and a substantial tendency towards the breakdown of the recovery of the entire petroleum and allied industries throughout the United States. One of the cornerstones of the present national program is in virtual suspension and the conservation of a natural resource essential to the national defense is seriously imperiled.

[fol. 239] The appellants further state that in their opinion the order of said District Court granting said permanent injunction should and will be reversed, or, at least,

that it appears that there is reasonable doubt as to whether the order of said District Court should be sustained.

Wherefore, appellants pray this Honorable Court to enter an order of supersedeas, without bond, staying the permanent injunction granted by the decree entered in this cause on February 21, 1934, and commanding said District Court, its Judge, Clerks and Marshals to refrain from taking or suffering to be taken before them any further proceedings pursuant to or by virtue of, said decree granting said injunction herein, until the hearing and decision by this Court of the said appeal and the return of the mandate thereon; and ordering that good and sufficient service of such order of this Court shall be deemed made by lodging in the office of the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division thereof, a true copy of this motion and the order of the Court entered thereon; and for such further relief as to this Court may seem proper.

Charles Fahy, John F. Davis, Chas. I. Francis, Special Asst. to the Atty. Gen'l, Attorneys for Appellants, 617 Citizens Nat. Bank Bldg., Tyler, Texas.

[fol. 240] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. —

A. D. RYAN et al., Appellants,

vs.

PANAMA REFINING COMPANY et al., Appellees

No. —

ARCHIE D. RYAN et al., Appellants,

vs.

AMAZON PETROLEUM CORPORATION et al., Appellees

AFFIDAVIT IN SUPPORT OF MOTIONS FOR SUPERSEDEAS AND STAY ORDERS

Before me, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Chas. I. Francis, known to me to be the identical person whose name is subscribed to this affidavit and who being by me duly sworn on oath deposes and says:

My name is Chas. I. Francis. I am Counsel of Record in the Panama and Amazon cases. I am an Assistant Solicitor in the Department of the Interior of the United States and a Special Assistant to the Attorney General [fol. 241] of the United States and in such capacity have been charged with the duty of enforcing, in the Eastern District of Texas, the Code of Fair Competition for the Petroleum Industry, Section 9 (c) of the National Industrial Recovery Act and the Regulations issued under Section 10 (a) thereof. I commenced this work on November 27, 1933, and am particularly familiar with conditions existing in the East Texas oil field and generally with conditions in the petroleum industry throughout the nation since that date.

Since the decrees of the United States District Judge Bryant in the Panama and Amazon cases have been entered, there has been a material increase in the production and transportation of illegally produced and refined petroleum—in my judgment amounting to approximately 100 per cent increase in the East Texas oil field alone. In my opinion, this increase is solely due to the effect of these decrees.

The present overproduction in this field is approximately seventy-five thousand barrels per day, as compared with approximately forty thousand barrels per day during the month of January, 1934.

This overproduction threatens the interstate market for petroleum and its products and menaces the Federal government's stabilization and conservation program under the National Industrial Recovery Act.

For the reasons stated in the appellants' motions and brief herein filed. I believe that a supersedeas and stay order should be entered by this Court. If such supersedeas [fol. 242] and stay orders be entered, the Appellants will diligently prosecute such appeals.

Chas. I. Francis, Special Assistant to the Attorney General.

Subscribed and sworn to before me this the 31st day of March, A. D. 1934. Mrs. H. I. Griffies, Notary Public, Smith County, Texas. My commission expires June 1, 1935. (Seal of Notary Public, County of Smith, Texas.)

[fol. 243] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT, PHIL E. BAER, Appellants,

v.

AMAZON PETROLEUM CORPORATION et al., Appellees

Response to Motion of Appellants for Supersedeas and Stay

RESPONSE OF APPELLEES TO MOTION FOR SUPERSEDEAS AND STAY—Filed April 4th, 1934

To the Honorable the Justices of the United States Circuit Court of Appeals for the Fifth Circuit:

Your respondents would respectfully show that it is not true that unless this Honorable Court grants a supersedeas in this cause and stays all proceedings there will be grave and irreparable injury and damages to the appellants, and to the producers of petroleum in the State of Texas and elsewhere throughout the United States; that it is not true that grave and irreparable injury and damage will be done to the Secretary of the Department of Interior in his administration of Section 9-C of the National Industrial Recovery Act; that it is not true that the effect of the decree and injunction will be to bring to a complete halt the government's program in and for the petroleum industry in the State of Texas and elsewhere throughout the United States; or that it will result in a substantial tendency towards the breakdown of the recovery of the entire petroleum and allied industries throughout the United States; [fol. 244] that it is not true that the effect of said decision is to virtually suspend the present national program for the conservation of the natural resources essential to the National Defense.

II

Your respondents would further respectfully show to the court that it is not probable that the permanent injunction granted by the District Court will be reversed, or that there is any reasonable doubt that said order will be sus-

tained, because it appears from the court's findings of fact and conclusions of law that the appellants were acting wholly without authorization of law in that they were attempting to regulate and restrict the production of petroleum from the wells of the appellees under the guise of regulating interstate commerce, whereas the appellees were not engaged in interstate commerce, and the business of the appellees as conducted by them does not affect interstate commerce, except incidentally and remotely.

III

Your respondents would further respectfully show to the court that the appellants would suffer no loss or damage whatever by reason of the order of the District Court not being stayed, because the orders of the Railroad Commission of Texas were held valid, and these appellees under and by virtue of the decision of the court upholding said orders are now operating their properties in strict conformity with the orders of the Railroad Commission of Texas. The appellees are not engaged in either buying, selling, shipping or transporting petroleum in interstate commerce, but on the other hand are engaged exclusively in the producing of oil which is sold by them at the stock tanks on the leases near the wells where it is produced, and title passes from the appellees upon delivery to purchasers at the stock tanks. Therefore, the injunction of the District [fol. 245] Court in no way interferes with the government in the administration of the National Industrial Recovery Act which prohibits the shipment of oil produced in excess of the orders of the Railroad Commission in interstate commerce.

IV

Respondents would further respectfully show to the court that by reason of the fact that they are compelled by the statutes of the State of Texas to comply with the orders of the Railroad Commission of Texas, and are not permitted to produce in excess of the allowable fixed by the Railroad Commission of Texas, a stay of the order of the District Court would accomplish nothing.

V

Respondents would further respectfully show to the court that under the findings of the District Court the appellants,

without authority of law, were, under the guise of regulating interstate commerce, attempting to regulate and restrict the production from appellees' wells, which would and did result in irreparable loss and damage to the appellees, for which they have no adequate remedy at law, and that unless an injunction was granted the appellants would without authority of law, institute and prosecute penalty suits against the appellees, and would cause the appellees to be subjected to criminal prosecution for alleged violations of the so-called Code of Fair Competition, all of which would result in irreparable loss and damage to the appellees. Therefore, if the motion of the appellants for a stay is granted, these appellees, as found by the District Court, will be subjected to prosecutions both civilly and criminally, regardless of whether or not they continue to comply with the orders of the Railroad Commission of Texas.

[fol. 246] Wherefore, appellees respectfully pray that the motion of the appellants be denied; for costs, and general relief.

Saye, Smead & Saye, for Appellees.

[fol. 247] No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER

versus

AMAZON PETROLEUM CORPORATION et al.

ORDER STAYING DECREE PENDING APPEAL

Extract from the Minutes of April 4th, 1934

Upon application of appellants, it is ordered that pending the appeal herein the decree of the district court, insofar as it enjoins inspections and the furnishing of reports of oil produced as required by the provisions of law and regulations complained of, be and the same hereby is stayed.

[fol. 248] No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER

versus

AMAZON PETROLEUM CORPORATION et al.

ARGUMENT AND SUBMISSION

Extract from the Minutes of May 2nd, 1934

On this day this cause was called, and, after argument by Douglas Arant, Esq., Special Assistant to the Attorney General, and Chas. I. Francis, Esq., Special Assistant to the Attorney General, for appellants, and F. W. Fischer, Esq., and J. N. Saye, Esq., for appellees, was submitted to the Court.

[fol. 249] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER, Appellants,

versus

AMAZON PETROLEUM CORPORATION et al., Appellees

Appeal from the District Court of the United States for the Eastern District of Texas

Before Bryan, Foster and Sibley, Circuit Judges

Filed May 22nd, 1934

SIBLEY, Circuit Judge:

The Amazon Petroleum Corporation, with other producers of petroleum in the East Texas field, brought a bill to enjoin the Railroad Commission of Texas and other officers of the State from enforcing orders of the Commission which greatly restricted the production of oil; and at the same time to enjoin Ryan, an agent of the Department of

the Interior of the United States, and the United States [fol. 250] District Attorney and the Marshal from enforcing certain portions of the National Industrial Recovery Act and of the Regulations and Code for the Petroleum Industry promulgated thereunder. A court of three judges having severed the two causes of action and taken jurisdiction of that to enjoin the orders of the Railroad Commission, upheld those orders. Amazon Corporation vs. Railroad Commission, 5 Fed. Sup. 633. The cause of action against the federal officers was tried by the District Judge and a final decree rendered by which the defendants were perpetually enjoined from enforcing Section 4 of Article III of the Petroleum Code and Regulation IV, and from going on the property of the complainants by virtue of them, and from instituting civil actions or criminal prosecutions for violation of them. 5 Fed. Sup. 639. This decree is now under review by appeal.

Article III of the Petroleum Code is entitled Production. Section 1 relates to limiting imports of petroleum and its products. Section 2 relates to withdrawals from storage. Section 3 provides for a Federal Agency designated by the President to make estimates of required domestic production and under approval of the President to allocate it equitably among the states. Sec. 4 reads: "The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 of Article III of this Code not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in [fol. 251] which event it is hereby agreed that such quotas shall become operating schedules for that State. If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 2 of this Code, in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this Code." The attacked Regulation IV was made by the Secretary of

the Interior by virtue of the delegation to him of the Presidential power by an Executive Order of July 14, 1933. In substance the Regulation requires every producer of petroleum to file with the Department of the Interior each month a sworn statement of the allowable production fixed by the State Agency for each of his properties and wells, the daily production from each and the place of storage, and a declaration that none of the petroleum produced or shipped was in excess of the amount permitted by the state. Regulation VII requires that adequate books and records of all transactions in production and transportation of petroleum be kept and maintained available to inspection by the Department of the Interior. No provision is called to our attention which specifically authorizes the inspection of oil properties and storage tanks. The evidence is without substantial conflict, and shows that the complainants are only producers of crude petroleum, neither selling it for delivery in other states or countries nor transporting it thither, but disposing of it on their properties in Texas. The Texas Railroad Commission has adopted the allocation for the state made under Petroleum Code, Article III, Section 3, and its orders have reduced the allowable production of complainants' wells to a small percentage of their capacity. The defendants are demanding the reports required by Regulation IV, are inspecting the books and the properties of the complainants and gauging their storage tanks, and threaten and intend to prosecute them for vio- [fol. 252] lation of the Regulations and Code. Some of the complainants have in fact been producing and disposing of petroleum in excess of that allowable. The East Texas oil field is the largest in the country and capable alone of producing the petroleum marketable in the United States. It has most of the flowing wells from which oil is most cheaply produced. Production in excess of market demand greatly affects the market price, which has often fallen below the cost of production even in Texas, and sometimes as low as ten cents per barrel at the well. Eighty-five per cent of the oil produced in Texas and its products is transported into other states, and greatly affects the oil business in all states. Eighteen other states produce petroleum also, of which California and Oklahoma are capable of producing amounts comparable with those producible in Texas, but in other states the wells are less bountiful and more costly in operation, but yield a very

large aggregate production and represent a huge investment. Petroleum is an exhaustible national resource, very necessary in the arts of peace and war, of importance to all parts of the country and incapable of satisfactory substitution. Its production is a major industry and its distribution is necessarily carried on largely in interstate and foreign commerce since over half of the states produce none. It is peculiar in its transportation and handling, because this is most largely done by means of pipe lines in which the oil of many producers is often indistinguishably mingled on the way to a refinery, to storage tanks, or in transportation to other states and countries. In the oil fields these pipe lines are a complicated and connected system, often underground, with unobservable ramifications. Sometimes by-passes are employed to run oil secretly around the place for its measurement by the mere opening of a valve. By these means and others oil in excess of what is allowable is produced and shipped in interstate [fol. 253] commerce in large quantities, not only defeating the attempted restrictions but demoralizing the general markets and often cheating those who have royalty interests in what is produced. If the transportation of excess oil in interstate commerce is to be successfully controlled, the system of reports and records required and the inspections practiced are both reasonable and necessary.

The main contentions made by appellants or by appellees are: 1. That the Secretary of the Interior is an indispensable party to the attack on his Regulations. 2. That the production of oil cannot be regulated by Congress and the provisions of the Act and of the Regulations and of the Code dealing with it are unconstitutional. 3. That the Regulations and the Code exceed the authority given by the Act. 4. That if Congress could itself have made the attacked provisions it could not delegate to the President and he could not delegate to others the power to make them. 5. That the reports and inspections are searches and compulsions to self-incrimination forbidden by the Constitution.

1. The Secretary of the Interior is not personally doing or threatening the acts of trespass and of prosecution which are sought to be enjoined. Although the actors may be authorized and incited by him so that he would be a proper co-defendant if he were within the court's reach,

the court has power to stop the trespassing by those within its jurisdiction irrespective of their claim that they are acting for others. Osborne vs. Bank of United States, 9 Wheat. 738; State of Colorado vs. Toll, Supt., 268 U. S. 228. This is not a bill to cancel the Secretary's Regulations, but only to test their efficacy to protect defendants in their alleged trespasses against complainants' rights. There is no more need to make the Secretary a party for this purpose than to make the President a party because he promulgated the Code or the Congress because it enacted the statute.

[fol. 254] 2. The National Industrial Recovery Act, Section 303, provides: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby." We are therefore called on to deal only with those provisions of the Act directly involved in this case, and with their application to the circumstances here appearing. A more general discussion of the Act is both unnecessary and inappropriate. Section 9 is devoted to oil regulation. Paragraph (c) reads: "The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder by any board, committee, officer or other duly authorized agency of a state. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by a fine of not to exceed $1,000 or imprisonment for not to exceed six months, or both." The prohibition thus authorized was made by the President on July 11, 1933. On its face it is a regulation of transportation in interstate and foreign commerce, and within that familiar power of Congress. But because it is expressly based on and is designed to aid a restriction on production or withdrawal from storage made by valid state law or regulation it is said to be in reality a regulation of production within the state, which is not interstate or foreign commerce. Oil production is either mining or manufacture. Neither the one nor the other is ordinarily within the power of Congress to regulate within a state.

Kidd vs. Pearson, 128 U. S. 1; Hammer vs. Dagenhart, 247 U. S. 251; United Mineworkers vs. Coronado Coal Co., 259 U. S. 345; Oliver Iron Mining Co. vs. Lord, 262 U. S. 172; [fol. 255] Champlain Refining Co. vs. Corporation Commission, 286 U. S. 210; Utah Power & Light Co. vs. Pfost, 286 U. S. 165. It may be that under peculiar circumstances, such for example as are here shown to exist in the relation of oil production in Texas to commerce in oil with and among the other states, such a burden on or interference with intertsate commerce may exist as to justify Congressional action, as in the case of intrastate rates which injuriously affect interstate commerce, Houston, E. & W. T. R. R. Co. vs. United States, 234 U. S. 342; Wisconsin R. R. Commission vs. C. B. & R. R. R. Co., 257 U. S. 563; Florida vs. United States, 282 U. S. 194; or local stockyard practices, Stafford vs. Wallace, 258 U. S. 495, or selling of grain on the exchanges. Chicago Board of Trade vs. Olsen, 262 U. S. 1. Such a question may arise under the provisions of the Petroleum Code, Article III, Section 4, relating to the fixing of production quotas, but in the provision of the Act now before us there is no such question. The regulation of production is assumed to have been validly made by the state, and the federal regulation is actually only of interstate and foreign commerce, adjusted to aid and not to thwart the state action. Such cooperation between state and central government is not Constitutionally wrong, but right and desirable. The central government was not created to be an opponent and a rival of the state governments, but to be a supplement and a protection to them. Its enumerated powers, although supreme and sometimes exercised to the dissatisfaction of some state, are not misused when by a happy concord of duty these governments can cooperate. The grant to the central government of the power to regulate interstate and foreign commerce is without qualification and in general exclusive of the states, and that government may rightly take up the regulation of a matter at the point where the state government because of this grant must itself cease to regulate. Thus when some of the states in the exercise [fol. 256] of their general police power sought to control the transportation and sale of intoxicating liquors within their borders, Congress with a plain purpose to make the state regulation more effective first made such liquors subject to state laws on arrival, and later forbade them to be

transported in interstate commerce into such a state. In Re Rahrer, 140 U. S. 545; Clark Distillery Co. vs. Western Maryland R. R. Co., 242 U. S. 311. So the states in the exercise of their police power regulate the stealing of automobiles, but Congress supplementarily forbids and punishes the interstate transportation of stolen cars. Brooks vs. United States, 267 U. S. 432. The Lottery Act supplements in the federal domain a police power indubitably residing in the states. Champion vs. Ames, 188 U. S. 321. Other instances might be cited. The provision of the National Industrial Recovery Act under discussion is not unconstitutional because it operates and was intended to operate so as to make more effectual valid state action with reference to oil production.

Nor is it unconstitutional because its effect is temporarily to restrict the volume of interstate and foreign commerce in oil. No doubt in general there should be free trade among the states, but that is not to say that laissez faire must have full scope. The power to regulate interstate commerce is given to Congress in identical terms with the power to regulate foreign commerce. The regulation of foreign commerce for the good of the whole country by severe restrictions on immigration, and by protective tariffs on goods, and by embargoes, is a part of our history and maye be independent of any inherent objectionableness in the persons or the articles affected. A similar power, with some special restrictions, exists as to interstate commerce and may be exercised not only to exclude harmful articles but to better the health and stability of such commerce as a whole. Regulation by prohibition was [fol. 257] upheld in the cases above cited. What a centralized constitutional government may do in the way of regulation of trade or commerce our dual system can accomplish by the cooperation of its state and central governments.

The contention is also made that the effect of Sect. 9(c) of the statute is to take property without due process of law. Of course regulations of commerce, whether by state or central government, must not offend other provisions of their respective constitutions. But by hypothesis of the statute the regulation by the state must be a valid one. Validity has been adjudicated in this case. The prohibitions on this point of the state constitution and of the Four-

teenth Amendment with reference to the state are so similar to the prohibition of the Fifth Amendment as to the central government that if the state regulation be valid the assisting federal statute cannot well offend at this point.

3. The Act, Sect. 10(a), authorizes the President to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and provides punishment for their breach. Regulations IV and VII providing for monthly statements and for books and records subject to inspection are clearly shown to be necessary in order to render effectual the prohibition of the statute against shipping excess petroleum in interstate and foreign commerce. Excess oil cannot be distinguished after it is mingled with other oil either in the storage tank, the pipe line or the tank car. If it is produced it can be traced into interstate commerce only by producers' reports and such inspections as are provided for. The fact that the producers themselves do no- engage in interstate commerce does not render it less necessary that they furnish information. Those who buy from them probably could not tell whether what they bought and were about to ship was or [fol. 258] was not excess oil. The inspection of books is only a check on the truthfulness of the reports. The attacked regulations are supported as reasonably necessary to the purposes of the Act.

The Code provision, Art. III, §4, adopted under Sect. 3 of the Act, goes further than the provisions of Sect. 9(c) heretofore considered because it deals directly with production. These complainants have not consented to the Code and are bound by it only if it has the force of law. The Code provides for an ascertainment by a Federal Agency of the required domestic production of crude oil and its products, and for its equitable allocation among the several states by Presidential approval; and if the allocation is not regarded by the state agencies by making a subdivision of it among the pools, leases and wells, within the state so that an excess production results, the President may either regulate shipments out of the state so as to equalize such shipments or may himself make and recommend to the state agencies such quotas, which shall then become operating schedules for that state. Production by any person in excess of the quota assigned to him is declared an unfair trade practice and in violation of the

Code. Since production of excess oil and not its shipment in interstate or foreign commerce thus constitutes violation of the Code, it is said that the commerce power of Congress is exceeded. In this case the State of Texas has fixed its own quotas, so that federal power to fix them is not involved. We do not inquire whether the production of crude oil intended for shipment in interstate or foreign commerce constitutes such a threat to do that act or such a temptation to it as to be capable of restraint in order to make effectual the prohibition of shipments in such commerce, in the manner in which the possession of intoxicating liquors was held to be regulable by Congress although the sale and transportation only of them was within [fol. 259] Congressional power. For by reference to Sect. 5 of the Act it appears that the sanctions for violating the Code are but three. Paragraph (b) declares a violation to be an unfair method of competition within the meaning of the Federal Trade Commission Act. If that sanction be an unlawful one, and should be sought to be applied against complainants before the Federal Trade Commission, they have their remedy in that proceeding. Paragraph (c) provides for injunction proceedings by the District Attorney to prevent violation, and a complete remedy against wrong is available there. Paragraph (f) provides a sanction by criminal prosecution, but only when the violation is "in any transaction in or affecting interstate or foreign commerce." An indictment or information could not stop at alleging the production of excess oil, but would have to allege with appropriate fulness that it was in a transaction in interstate commerce or affecting it. This sanction is thus tied to and seemingly not intended to exceed the commerce power of Congress. Each such criminal case would depend on its own facts. The provision of the Code thus enforced does not appear to be unconstitutional. Whether any complainant at any time has violated it is more appropriately to be tried in a prosecution of him than in this composite suit in equity. We may say of all three sanctions that an adequate remedy against abuse is afforded in the proceedings indicated by the statute for their respective enforcement, so that a remedy in equity by injunction may not be had.

4. The delegation to the President of power to put the prohibition of Sect. 9(c) into effect is not seriously at-

tacked. Such a thing has been often done under varying forms of language, as appears by the review of statutes in Field vs. Clark, 143 U. S. 649. See also Hampton vs. United States, 276 U. S. 394. But the regulations promulgated by the Secretary of the Interior and the Code approved by the President are strongly attacked as an im-
[fol. 260] proper delegation of legislative power. We have shown the regulations in question to be reasonable and within the Act if made by the President. The Act in Sect. 2(b) expressly authorized the President to appoint someone else to exercise any function or power given him, and he appointed the Secretary to exercise this function. It is the case of a legislative agent authorized to appoint a subagent. Congress, well knowing that the President could not personally do all that was put on him, authorized him to select someone to attend to the business instead of itself appointing such a one. We know of nothing to forbid it. The regulations made by the Secretary stand as though Congress had directly authorized him to make them.

The Code is a novelty in legislation. Its making was not a delegation by Congress of a power of legislation to the various trade or industrial groups mentioned in Sect. 3*[1]. The groups could really do nothing but advise the President, just as Congress itself often is advised by hearing those to be affected. While a very strong influence is accorded to each group, it is the President's act in approving a recommended Code or imposing an involuntary one that

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*[1] Congress by the Act of March 2, 1893, enacted that the American Railway Association, a mere trade body, should fix the height of draw-bars for railway cars which was to be established as standard by the Interstate Commerce Commission, but there was thereby no unconstitutional delegation of legislative power. St. Louis & Iron Mountain R. R. Co. vs. Taylor, 210 U. S. 281. By R. S. § 2324 Congress in providing for mining on the public lands enacted that the miners in each district might make regulations not in conflict with law. These regulations come close to being a miners' code of fair competition in staking out claims, but there was no improper delegation of legislative powers to the miners. Erhart vs. Boaro, 113 U. S. 527; Butte City Water Co. v. Baker, 196 U. S. 119.

gives it force. Congress puts sanctions behind either which are intended to make it enforceable law. Whether the general purposes of the Act stated in Sect. 1, together with the requisites of a Code set out in Sect. 3 or elsewhere are statements of an intelligible legislative plan sufficient to be [fol. 261] filled out and executed by a commission after hearing those to be affected, as for instance when a legislature orders just and reasonable rates to be established on railroads and authorizes a commission to enquire into and fix them, is a question we need not broadly answer.*2 The particular policy and plan disclosed in Sect. 9 to regulate excess oil by debarring it from interstate commerce is entirely clear. The regulations and Code provisions which are here in issue do not go beyond that purpose and plan.

5. The regulations touching reports and inspection of records are not in violation of the prohibition of the Fourth [fol. 262] Amendment forbidding unreasonable searches or of the Fifth Amendment guaranteeing that no person shall be compelled in any criminal case to be a witness against himself. A producer of oil does not operate under any right or license derived from the federal government and is not subject to such rigorous treatment as if he did. But he is a citizen within the protection of that govern-

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*2 While Congress cannot abdicate legislative power, it may make large delegations of it, always retaining the right of control and of reassumption. While the Constitution was being written the then Congress on July 13, 1787, made the Ordinance for the Government of the Northwest Territory, in which very broad legislative powers were delegated. Similar delegation occurred when the Louisiana Territory was purchased. Sere vs. Titot, 6 Cranch. at page 337. Legislative power appropriate for a municipality was delegated with reference to the District of Columbia. Stoutenberg vs. Hennick, 129 U. S. 141. Governments with legislative powers have been established by Congress for other territories and insular possessions. See United States vs. Heinszen, 206 U. S. at page 385. Broad powers given the Secretary of Agriculture to make regulations touching forest reserves, whose breach was criminally punishable, were upheld in United States vs. Grimaud, 220 U. S. 506. In all these cases matters within the states were not directly affected. Such matters ought no doubt to be kept more di-

ment and owes it a citizen's duty to assist in the enforcement of its laws. The object of the reports and the inspection of books is to ascertain the existence and the disposition of excess oil in order that its interstate and foreign transportation may be stopped. The government has a right to know about this, just as it has a right to know what the citizen's income is that it may be taxed. Presumably no crime has been committed by producer or taxpayer. No criminal case is pending, and the immediate purpose is information and not prosecution. The fact that the report is required greatly tends to keep producer or taxpayer from committing a crime that would be disclosed thereby. But if he has committed a crime and is entitled to withhold evidence of it, he should at the proper time and on the specific ground that disclosure would tend to criminate him, assert the right to withhold the particular evidence. Because such a thing conceivably might occur is no reason to upset laws and regulations which are generally useful and necessary in the public business.

The inspection of properties and tanks and pipe lines does not seem to be expressly authorized by any regulation. It may be a civil trespass when not consented to, even though it is not a search in the constitutional sense

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rectly in Congressional control; but even so, practical necessity has required of Congress more and more to act through agents in fixing legislative details. The Interstate Commerce Commission is an outstanding example. One of its broadest discretionary powers in reference to the long and short haul clause was upheld as validly delegated in United States vs. Atchison, T. & S. F. R. R. Co., 234 U. S. 476. The Secretary of War is validly empowered to require alteration or removal of bridges which unreasonably obstruct navigable waters. Union Bridge Co. vs. United States, 204 U. S. 364; Monongahela Bridge Co. vs. United States, 216 U. S. 177. The Federal Reserve Board was validly authorized to empower individual National Banks to act as trust companies. First National Bank Bay City vs. Fellows, 244 U. S. 416. The delegation to the President of power to alter tariffs within limits and for purposes disclosed was held not unconstitutional in Hampton vs. United States, 276 U. S. 394. We have discovered no delegation which Congress has plainly made that has been refused recognition by the Supreme Court.

when the premises are open to free entry. See Hester vs. United States, 265 U. S. 57; United States vs. Western & Atlantic Railroad, 297 Fed. 482. But if a trespass, there is no showing of irreparable damage or insolvency of the [fol. 263] trespassers, and no occasion for an injunction on that account.

We are of opinion that the injunction ought not to have been granted, and the decree is reversed and the cause remanded with direction to dismiss the bill.

[fol. 264] No. 7350

ARCHIE D. RYAN, S. D. BENNETT, and PHIL E. BAER,

versus

AMAZON PETROLEUM CORPORATION et al.

JUDGMENT

Extract from the Minutes of May 22nd, 1934

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with direction to dismiss the bill.

[fol. 271] No. 7350

ARCHIE D. RYAN, S. D. BENNETT, and PHIL E. BAER,

versus

AMAZON PETROLEUM CORPORATION et al.

ORDER DENYING REHEARING

Extract from the Minutes of June 29th, 1934

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 272] IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT, and PHIL E. BAER, Appellants,

versus

AMAZON PETROLEUM CORPORATION et al., Appellees

Application of Appellees for Stay of Mandate

APPLICATION FOR STAY OF MANDATE—Filed July 5th, 1934

Come now the appellees in the above entitled and numbered cause, and would show to the court that they will immediately, and as soon as the clerk of this court can prepare a transcript of the proceedings in this cause, apply to the Supreme Court of the United States for a writ of certiorari to review the judgment rendered herein by this honorable court, wherein it reversed the judgment of the district court and vacated and set aside the injunction granted by the district court in favor of appellees and against appellants and ordered a dismissal of appellees' bills of complaint.

[fol. 273] Appellees would further show that while this cause was pending before this honorable court and before its determination thereof, this court entered an order staying the injunction granted appellees by the district court, in so far as it enjoined inspection and the furnishing of

reports of oil produced and refined, as required by the provisions of the law and regulations complained of. Therefore, the only portion of the decree of the district court that has not already been stayed by this court is that part wherein appellants are enjoined from proceeding with the criminal prosecutions already instituted against appellees, and from instituting additional criminal prosecutions against appellees because of their failure to comply with the regulations that are attacked in this suit.

Appellees would further show to the court that there is now pending before the Supreme Court of the United States in the cause of United States of America, appellant, vs. J. W. Smith, et al., appellees, and numbered 869 on the docket of said court, the question of whether one may be subjected to criminal prosecution for failure to comply with the identical regulations that are attacked in this suit; and the determination by the Supreme Court of the United States of that question in said cause will be determinative of the question as to whether the appellees in this case may be subjected to criminal prosecution for failure to comply with the regulations attacked herein.

Appellees would further show to the court that they believe that if the mandate of this court, vacating the injunction of the district court, is not stayed, the appellants will [fol. 274] immediately proceed with said criminal prosecutions, as well as institute other criminal prosecutions because of the failure of appellees to comply with the attacked regulations before and after the granting of the injunction against them in the trial court, notwithstanding the question of the appellees' criminal liability for failure to comply with said regulations is now pending before the Supreme Court of the United States and set for submission in October, 1934.

Wherefore, because of the premises, appellees pray that this honorable court stay its mandate for such time as will enable the appellees to apply to the Supreme Court of the United States for a writ of certiorari to review the judgment of this court, and if appellees file such application with the clerk of said court within such time, then that said mandate be stayed until this cause is determined by said court.

Respectfully submitted, W. T. Saye, J. M. Saye, W. Edward Lee, Longview, Texas; F. W. Fischer, Tyler, Texas; (Signed) F. W. Fischer, Attorneys for Appellees.

[fol. 275] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER, Appellants,

versus

AMAZON PETROLEUM CORPORATION et al., Appellees

ORDER STAYING MANDATE—Filed July 18th, 1934

On consideration of the application of the Appellees in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 18th day of July, 1934.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 276] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify

that the pages numbered from 235 to 275 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 7350, wherein Archie D. Ryan, S. D. Bennett and Phil E. Baer are appellants, and Amazon Petroleum Corporation, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 234 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 18th day of July, A. D. 1934.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 277] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1934.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,888. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 260. Amazon Petroleum Corporation, Barney Cockburn, E. J. Boase, et al., Petitioners, vs. Archie D. Ryan, S. D. Bennett and Phil E. Baer. Petition for a writ of certiorari and exhibit thereto. Filed August 6, 1934. File No. 260, O. T., 1934.